Cia. PERUANA DE VAPORES Y DIQUE DEL CALLAO

From West Coast of South America

To New York and Intermediate Ports.

Direct Service

PRODUCT OF PERU

9708 Sacks of crainy sugar gross weight 1089106 kilos

Seges parcelas "Product of Peru"

25.00 dollars per tonda 1016 kilos

"No claim shall under any circumstances whatever attach to the vessel or her Owners for failure to notify consignees of arrival of goods."

COPIA

NOT NEGOTIABLE

RECEIVED ON BOARD

~~Received on Board~~ by Compañía Peruana de Vapores y Dique del Callao:

"WHATALI"

Sociedad Arrocera Repoin Ltda.

Samanco (Peru)

New York

Nine thousand seven hundred and eight 00 per margin

PACKAGES OF MERCHANDISE.

New York

To Order.-Estéfy Olayzaria & Co., Inc., N.Y.

FOR CONTINUATION OF CONDITIONS SEE BACK

NOTICE. In accepting this Bill of Lading, the Shipper for himself and on behalf of the Consignee or Owner of the goods or holder of the Bill of Lading, expressly accepts and agrees to all its stipulations, exceptions and conditions, whether written or printed, or whether in accordance or not with the custom of the Port of Discharge; and the fact of its not being signed by the Shipper shall not prejudice the preceding Clauses, all of which are and shall be binding upon all the parties interested in the same manner and to the same extent, as if each or all of them had signed the Bill of Lading.

IN WITNESS whereof the Master, Purser or Agent of the said vessel hath affirmed to ... Bills of Lading, all of this tenor and date, one of which being accomplished, the others to stand void. ... any one of the Bills of Lading must be given up duly endorsed, in exchange for the goods or for Delivery Order.

Dated in Samanco (Peru) this ... 2 ...

We accept the contents of this Bill of Lading.

Sociedad Arrocera ...

Shippers

FOR THE COMPAÑIA PERUANA DE VAPORES Y DIQUE DEL CALLAO

[redacted]

Authorised July, 1926

Cía. PERUANA DE VAPORES Y DIQUE DEL CALLAO

From
West Coast
of
South America

To
New York
and
Intermediate
Ports.

Direct Service

PRODUCT OF PERU
S.A.
N.L.
H. 100.000

4854 Sacks of grainy sugar gross weight [illegible] kilos

SHORT SHIPPED 157 SACKS.

Sacos marcados "Product of Perú"

COPIA

NOT NEGOTIABLE

RECEIVED ON BOARD
~~Received for shipment~~ by Compañía Peruana de Vapores y Dique del Callao

From Sociedad Agricola Nepeña Ltda., on board the Vessel "UCAYALI"

whereof [illegible] is Master for the present voyage

and now lying off the Port of Samanco (Perú)

and bound for the Port of New York and intermediate ports with liberty for the vessel [illegible]

Four thousand eight hundred and fifty four as per margin PACKAGES OF MERCHANDISE

said to be marked and numbered and as described as per margin, but not hereby noted, and to be carried to the Port of New York or as near thereto as she can without risk of detention or delay safely get, and to always afloat, and there to be delivered subject to the exceptions and conditions mentioned in this Bill of Lading, which constitutes the Contract between the Company and the Owners [illegible]

To Order.—Notify Olavarria & Cº., Inc. N.Y. or to his or their Assigns.

The Shippers, Consignees, and Owners of the Goods, or their Agents are described herein as the Owners. The Owners or Charterers of the Vessel or their Agents are described herein as the Company.

1. The Company shall not be responsible for loss, non-delivery, mis-delivery, delay, detention, damage or injury [illegible]

FOR CONTINUATION OF CONDITIONS SEE BACK.

NOTICE. In accepting this Bill of Lading, the Shipper for himself and on behalf of the Consignee or Owner of the goods or holder of the Bill of Lading, expressly accepts and agrees to all its stipulations, exceptions and conditions, whether written or printed, or whether in accordance or not with the custom of the Port of Discharge, [illegible]

IN WITNESS whereof the Master, Purser or Agent of the said [illegible] Bills of Lading, all of this tenor and date, one of which being accomplished, the others to stand void. [illegible] one of the Bills of Lading must be given up duly endorsed, in exchange for the goods or for Delivery Order.

Rate of Freight 15.00 dollars per ton, de 1016 kilos

Dated in Samanco (Perú) the [illegible] 1937

We accept the [illegible]

FOR THE COMPAÑÍA PERUANA DE VAPORES Y DIQUE DEL CALLAO

Shippers

"No claim shall under any circumstances whatever attach to the vessel or her Owners for failure to notify consignees of arrival of goods."

CONDITIONS—Continued.

[illegible]

[illegible]

[illegible]

[illegible] July 193[illegible].

Cia. PERUANA DE VAPORES Y DIQUE DEL CALLAO

From
West Coast
of
South America

To
New York
and
Intermediate
Ports.

Direct Service

- PLEASE NOTIFY MESSRS OLAVARRIA & CO., NEW YORK -

[illegible] A A A PRODUCT OF PERU	20,320 BAGS REFINED WHITE SUGAR 1,016,000 GROSS KILOS

FALTAN OCHO (8) SACOS EN EMBARCADERO

CUATRO (4) SACOS CAIDOS AL MAR

SHORTSHIPPED EIGHT BAGS

LOST OVERBOARD FOUR BAGS

- ASSURED BY THE BUYERS -

"FREIGHT COLLECT"

Rate of Freight

VDA. DE PIEDRA E HIJOS

"No claim shall under any circumstances whatever attach to the vessel or her Owners for failure to notify consignees of arrival of goods."

[illegible] West Coast Leader (1938)

Received for shipment by Compañía Peruana de Vapores y Dique del Callao

[illegible] From VDA. DE PIEDRA E HIJOS S.A., on board the Vessel "UCAYALI"

whereof [illegible], is Master for the present voyage,

and now lying off the Port of [illegible]

and bound for the Port of NEW YORK [illegible]

TWENTY THOUSAND THREE HUNDRED AND TWENTY BAGS [illegible] said to be marked and numbered [illegible] and to be carried to the Port of NEW YORK or so near thereto as she can without risk of detention or damage safely get, and lie always afloat, and there to be delivered, subject to the exceptions and conditions contained in this Bill of Lading, which constitutes the Contract between the Company and the Owners, from the vessel's tackles, where the Company's liability shall cease, unto TO ORDER [illegible] or their Assigns.

1. The Shippers, Consignees, and Owners of the goods, or their Agents are described herein as the Owners. The Owners or Charterers of the Vessel, or their Agents are described herein as the Company.

2. The Company shall not be responsible for loss, non-delivery, mis-delivery, delay, detention, damage, or injury occasioned by or arising, directly or indirectly, from any of the following perils, causes or things, namely: The Act of God, the King's or Country's Enemies, Pirates, Robbers, Thieves, [illegible]

COPY NOT NEGOTIABLE

[illegible] Panama Canal [illegible]

5. Cargo for ports not called at by the Vessels of the Company to be forwarded to destination either by Railway, Vessels, Lighters or other Conveyances at the discretion of the Company on the conditions of carriage of the Railway Company, Owners of vessels and other Companies conveying the cargo to its destination, the liability of the Company to cease on delivery to succeeding carriers. When any Bank, Railway, Dock or other Company accepts packages for store, conveyance or transhipment only at Owners' risk unless insurance or other increased rate is paid, the Company will in no case pay such insurance or higher rate for carriage or storage, unless expressly requested by the Owners and or Shippers of the goods to do so, the extra charges being payable by them.

FOR CONTINUATION OF CONDITIONS SEE BACK

NOTICE. In accepting this Bill of Lading, the Shipper for himself and on behalf of the Consignee or Owner of the goods or holder of the Bill of Lading, expressly accepts and agrees to all its stipulations, exceptions and conditions, whether written or printed, or whether in accordance or not with the custom of the Port of Discharge, and the fact of its not being signed by the Shipper shall not prejudice the preceding Clauses, all of which are and shall be binding upon all the parties interested in the same manner and to the same extent, as if each or all of them had signed the Bill of Lading.

IN WITNESS whereof the Master, Purser or Agent of the said vessel hath affirmed to THREE Bills of Lading, all of this tenor and date, one of which being accomplished, the others to stand void. If [illegible] Bills of Lading must be given up duly endorsed, in exchange for the goods or for Delivery Order.

Dated in [illegible] this 6TH day of [illegible] 19[illegible]

We accept the conditions of this Bill of Lading, including [illegible] back thereof.

Shippers

FOR THE COMPANIA PERUANA DE VAPORES Y DIQUE DEL CALLAO

CIA. PERUANA DE VAPORES Y DIQUE DEL CALLAO
VAPOR "UCAYALI"
CONTADURIA

5

CONDITIONS—Continued.

[illegible]

6. Consignees shall take delivery of the goods at all ports of discharge directly they come to hand in discharging the vessel, the Company to be at liberty to discharge either by day or night, Sundays and holidays, pushed under to Uncovered, whatsoever the state of the weather, at Wharf, or near lighters, hulk, temporary depot or lorryfoot. Cargo to be received as quickly as vessel can discharge, any custom of the port notwithstanding, otherwise the Company may land or warehouse the goods at discharge port, but such at the risk and expense of the Owners. Goods to be delivered at vessel's tackles, when the responsibility of the Company ceases. Packages of the delivery of the cargo, shall be done by the Company at the risk and expense of the Owners.

If the goods cannot be any reason whatsoever be found during the vessel's stay at the port of delivery, they may, when found be retained on board till the vessel returns to the port of delivery, or may be put back at the Company's option but Owner's risk, free of liability to the Company for any loss, deterioration, damage, delay or expense so caused.

The Company has liberty at any time to convey the goods in or from the vessel in lighters at the Owner's risk, but at Company's expense except in port of shipment or of discharge where the goods are delivered or discharged or otherwise herein provided for. It is expressly agreed that the Company does not in any way warrant the Seaworthiness of any such lighters, and the Company is not responsible for any loss or damage whatsoever to goods while in lighters.

7. Notwithstanding anything to the contrary contained herein it is expressly agreed that delivery of cargo consigned in this Bill of Lading is to be taken delivery of the cargo from ship, having in consideration of number, if required, just be made at Receivers' wharf or store in Owners' risk and expense, and the Company shall not be responsible in any way to Receiver thereof.

8. All Wharf and dockage, and dues by or imposed on cargo, demand by Receivers or Consignees agents, or by illegal size or weight of the packages, or by insufficiency of insufficient description or other particulars required by the Authorities at the Port of Discharge or Transhipment, either upon the packages or on the Bill of Lading or on Freight Manifest or other documents required by Canadian Customs or other regulations, shall be paid by the Owners and the Company shall have a lien upon the goods for the payment of all such wharf and charges.

9. The cost of re-bagging or re-making the cargo, if required, and all inspection and weighing charges, shall be paid by the Owners of the goods.

10. All quarantine expenses upon the goods, of whatever nature or kind, to be paid by the Owners of the goods, and any disinfecting expenses incurred by the vessel or the cargo to be paid by the cargo, notwithstanding any custom or jurisprudence on the subject.

The Company is not responsible for any damage or deterioration caused by fumigation or disinfection.

This Bill of Lading shall be governed by Operation Law in the countries of proceedings in the courts of any other country except for average, which shall be adjusted according to York Antwerp Rules, 1924, and adjusted in Liverpool.

11. Goods of a dangerous or inflammable character shall be shipped only with the consent of the Owners, and may be landed or destroyed at any time at Owners' expense, and without compensation to Owners, who shall be liable to the Company for any loss or damage caused by such non-disclosure, whether owner of the nature of the goods or not.

12. With respect to claims for loss, damage or non-delivery of cargo, and for which under the terms hereof the carrier may be liable, it is also mutually agreed that the value of such freight cargo shall be deemed to be and stated Fifty U. S. Gold or the equivalent in English currency, on which basis the freight is calculated, and the Carrier's liability shall in no case exceed this sum unless a value in excess thereof is specially declared in writing, and a special agreement entered be signed by and proved before shipment, and such excess value be stated herein and extra freight as may be agreed on paid, the Carrier not being liable to a greater amount than the sum of Fifty dollars per package or unit of Lading unless proven in writing by the Consignees to the Agents of the vessel at the port of destination within 48 hours after the landing of or failure of the Carrier, to deliver said goods. Where the goods are not delivered the usual five days allowance shall commence from the time to be given from the port of destination of the vessel purported to have carried said goods, and all claims must be presented within two months from the date of arrival of the vessel at destination, and further, no suit or proceeding to recover for any such claim or demand shall be maintained against the Carrier unless such action is commenced within twelve months after time of such notice of claim, notwithstanding the defendant is a non-resident or foreign corporation, and these limitations as to notice and suit can be waived only by an officer of the Steamship Company or of its General Agents in writing.

The Company shall not be responsible for gold, silver, Precious Metals, manufactured or unmanufactured, Plated Articles, Glass, Articles partaking in Glass, Articles of a fragile or perishable nature, valuable Papers, Documents, Bullion, Coin, Jewelry, Antiques used for Jewelry, Precious Stones, Trinkets, Watches, Clocks, Timepieces, Bonds, Stocks, Shares, Debentures, Securities, Bills of any country, Notes or securities for payment of money, Stamps, Maps, Letters, Writings, Time Tables, Publications, Diaries, Pictures, Statuary, Glass, Fire, Lace or Cashmere manufactured or unmanufactured, furnished, made up in shawls or contained in any package of parcel, whatever may be the value of such articles, nor for any other goods of whatever description, which may form contents or part contents of any package, beyond the sum of $100. — U. S. Gold per package unless the value thereof be declared at time of shipment on the Shipping Note, and expressed in the Bill of Lading, and extra freight, or such for agreed upon, paid. In no event shall the Company be liable for any loss or damage in price or value over the greater part of agreed value, whatever is lost, or for any consequential or special damages, or for any demurrage, detention, hulk, lighter, Wharfage, Landing, or other similar charges, and the Company shall have the option of replacing any lost or damaged goods.

13. Freight for the said goods, without discount or deduction, to be paid as per marks, and to be based either on the gross weight, measurement, number of value respectively ascertained at the Port of Discharge and according to the conditions stated in the Company's Tariff, or at the Company's option exercised at any time on the shipping or bill of Lading weight, measurements, number or value respectively, it being expressly agreed that full freight on the whole shipment is to be guaranteed as earned on shipment of the goods and must be paid, vessel and or cargo or any part thereof lost or not lost at any stage of the voyage goods, or in the event of forced interruption of the voyage. Double freight will be charged on all goods not correctly described.

All charges for measuring, weighing and counting cargo shall be for determining amount of freight on quantity, weight, or number delivered, shall be paid by Consignees, any custom of the port to the contrary notwithstanding.

14. The Company shall have a lien on all goods for unpaid freight and charges, whether payable in advance at port of shipment or not, and for payments made or liabilities incurred in respect of any freight, or other stipulated herein to be borne by the Owners, or previously constituted freight or charges, payments or liabilities in respect of any other goods for which the Company has a claim on such Owners, and for tonnage and forwarding charges, and the Company shall have the right to sell the goods by public auction, without notice, 14 days after exercise of lien all expenses of exercise of lien and sale to be paid by the proceeds.

15. The vessel shall have liberty to comply with any orders or directions as to departure, arrival, routes, ports of loading, call, or anchorage, stoppages or obstructions howsoever given by the Government or any department thereof or any person acting or purporting to act with the authority of the Government or any department thereof or by any Committee or person having, under the terms of the War Risks Insurance on the vessel, the right to give such orders or directions, and if by reason of and in compliance with any such orders or directions anything is done or is not done, the same shall not be deemed a deviation.

Compañía Peruana de Vapores y Dique Del Callao

CONTRATO DE FLETAMENTO.

Entre LA COMPAÑIA PERUANA DE VAPORES Y DIQUE DEL CALLAO, cuya denominacion en adelante será "La Compañia", por un lado, y los Sres. [illegible] U. [illegible] R D O - LIMA - FLETADORES ---------- por el otro; se ha convenido, mutuamente, en esta fecha, lo siguiente:

1.- Los Sres. FLETADORES ---------- embarcarán en [illegible] un puerto peruano -- y en la fecha que "La Compañia" indique, pero no antes del tres de Febrero -------, ni despues del veintiocho de Febrero de 1941 -------- un cargamento de azúcar en sacos ----------, compuesto de tres mil seiscientos a tres mil setecientas toneladas de un mil dieciseis kilos con destino a NEW YORK ---------- embarque será efectuado al Vapor -------- "U C A Y A L I", de un mil setecientas ---------- toneladas de registro, actualmente en viaje al Callao.
SEGURO: BARTLOW COMPORTLEN, FIRST CLASS.

2.- El flete convenido es de [illegible] DOLLARS ORO AMERICANO -------, por tonelada de un mil dieciseis --- kilos, pagadero en el puerto de embarque, o, a opcion de la Compañia, en el Callao, contra entrega del conocimiento firmado. El flete será pagado sobre el peso declarado en el conocimiento; pero "La Compañia" se reserva la opción de rectificar dicho peso durante la descarga, y cobrar flete sobre el exceso que encontrare. EL FLETE [illegible] PAGADERO A BORDO Y LA CARGA.

El 75% del flete será pagado en Lima, contra entrega de documentos y el saldo ó sea el 25% en New York.

SEGURO CARGA.- Cualquier prima extra de seguro de la carga, será de cuenta de los FLETADORES.

3.- El embarque y la descarga del cargamento, debera ser efectuado por los interesados, [illegible] de acuerdo con la cláusula 7a. dias habiles para la primera operación; y [illegible] de acuerdo con la cláusula 7a. dias hábiles para la segunda, dias que se contarán en ambos casos, desde el momento en que el Vapor -------- fondee en el puerto y su Capitán avise por escrito, que esta expedito para cargar o descargar, segun sea el caso. Transcurrido dicho numero de dias, los Sres. FLETADORES ---------- pagaran a la Compañia la suma de [illegible] CINCUENTA DOLLARS ORO AMERICANO -------- por cada dia que sea detenido, pago que deberá ser efectuado dia a dia y al contado.

En caso de que el Vapor --- llegara al puerto despues de las 9 a. m. dicho dia será considerado como medio dia hábil; y si llegara despues de medio dia, no se tomará en consideracion dicho dia de llegada.

Es entendido que para los efectos de las sobre-estadias, serán, considerados como dias hábiles, aquellos que no sean Domingo, dias feriados o de bravezza de mar; estos últimos deberán ser constatados por el Capitan del Puerto, quien deberá certificar, igualmente, que ningun otro nave ha podido efectuar operaciones de descarga o de embarque en el citado dia, por causa de la bravezza de mar.

4.- El Capitan o el Contador deberá firmar conocimientos de carga de cualquiera parte del cargamento y al tipo de flete, y cualesquiera otras condiciones que le fueran exigidas, sin que tal acto modifique o perjudique, en lo menor, el presente contrato, asi como tampoco las condiciones impresas del conocimiento que La Compañia tiene en uso, todas cuyas cláusulas son aceptadas por los Sres. FLETADORES ---------- siempre que ellas no se opongan a las condiciones especiales del presente contrato.

5.- Queda expresamente convenido que si el Vapor--- que conduce dicho cargamento no pudiera llegar a su destino - aparte de las causas citadas en la cláusula respectiva del conocimiento - por cualquiera otra independiente de la voluntad de "La Compañia", producida por ordenes emanadas de cualquier Gobierno o Autoridad, legal o ilegalmente constituida, de los puertos de embarque, transit o destino, La Compañia se reserva el derecho de descargar el cargamento en dicho puerto o en el más proximo posible, por cuenta y riesgo del interesado, y sin devolver parte alguna del flete percibido; o si tal operación de descarga no fuera posible, regresar el cargamento al puerto de embarque, cobrando en tal caso, un nuevo flete sobre el mismo, en proporcion a las millas de regreso recorridas, sobre la base del flete pactado en el presente contrato.

6.- Para el fiel cumplimiento de todo lo estipulado en el presente contrato, se comprometen y obligan, mutuamente, las partes contratantes, en general con sus bienes habidos y por haber, y, en particular, con el cargamento, los Sres. FLETADORES ---------- ; y con sus fletes y nave, La Compañia. La responsabilidad en ningun caso, excederá, para cualquiera de las partes, del monto del flete estipulado, valor que será pagado por la parte infractora del presente contrato a la otra parte.

7a.- El embarque se efectuará a razón de 500 toneladas mínimo por día hábil y la descarga en New York será de 6,000 sacos de 100 libras cada uno ó su equivalente por día ordinario, (con excepción de Domingos y feriados) debiendo a lo cual los Fletadores pagarán a la Compañia por demora (tiempo perdido) [illegible] y por tiempo ganado a su vez la Compañia pagará [illegible]

de [illegible] kilos con destino a [illegible] NEW YORK, [illegible] embarque será efectuado
" U C A Y A L I ", de un mil setecientos ---------- toneladas de registro, actualmente en viaje al Callao.
BANDERA: BARBADOS CONDITIONAL, FIRST CLASS.

2. El flete convenido es de [illegible] ORO AMERICANO ------- por tonelada de un mil dieciocho ---- kilos, pagadero en el puerto de embarque, o, a opción de la Compañía, en el Callao, contra entrega del conocimiento firmado. El flete será pagado sobre el peso declarado en el conocimiento; pero "La Compañía" se reserva la opción de rectificar dicho peso durante la descarga, y cobrar flete sobre el exceso que encontrare. EL FLETE [illegible] POR EL BARCO Y LA CARGA.

A 75% del flete será pagado en Lima, contra entrega de documentos y el saldo á ser el 25% en New York.

SEGURO CARGA.- **Cualquier prima extra de seguro de la carga, será de cuenta de los FLETADORES.**

3. El embarque y la descarga del cargamento deberá ser efectuado por los interesados, **de acuerdo con la cláusula 7a.** días hábiles para la primera operación; y **de acuerdo con la cláusula 7a.** días hábiles para la segunda, días que se contarán en natural canon, desde el momento en que el **Vapor** ------- fondee en el puerto y su Capitán avise por escrito, que esta expedito para cargar o descargar, según sea el caso. Transcurrido dicho número de días, los Sres. **FLETADORES** ---------- pagarán a la Compañía la suma de **[illegible] CINCUENTA DOLARES ORO AMERICANO** ---------- por cada día que sea detenido, pago que deberá ser efectuado día a día y al contado.

En caso de que el **Vapor** --- llegara al puerto despues de las 9 a. m. dicho día será considerado como medio día hábil; y si llegara despues de medio día, no se tomara en consideración dicho día de llegada.

Es entendido que para los efectos de las sobre-estadías, serán, considerados como días hábiles, aquellos que no sean Domingo, días feriados o de bravezza de mar; estos últimos deberán ser constatados por el Capitán del Puerto, quien deberá certificar, igualmente, que ningún otro nave ha podido efectuar operaciones de descarga o de embarque en el citado día, por causa de la bravezza del mar.

4. El Capitán o el Contador deberá firmar conocimientos de carga de cualquiera parte del cargamento y al tipo de flete, y cualesquiera otras condiciones que le fueran exigidas, sin que tal acto modifique o perjudique, en lo menor, el presente contrato, así como tampoco las condiciones impresas del conocimiento que La Compañía tiene en uso, todas cuyas cláusulas son aceptadas por los Sres. **FLETADORES** ---------- siempre que ellas no se opongan a las condiciones especiales del presente contrato.

5. Queda expresamente convenido que si el **Vapor** ---- que conduce dicho cargamento no pudiera llegar a su destino - aparte de las causas citadas en la cláusula respectiva del conocimiento - por cualquiera otra independiente de la voluntad de "La Compañía", producida por órdenes emanadas de cualquier Gobierno o Autoridad, legal o ilegalmente constituída, de los puertos de embarque, tránsito o destino, La Compañía se reserva el derecho de descargar el cargamento en dicho puerto o en el más próximo posible, por cuenta y riesgo del interesado, y sin devolver parte alguna del flete percibido; o si tal operación de descarga no fuera posible, regresar el cargamento al puerto de embarque, cobrando en tal caso, un nuevo flete sobre el mismo, en proporción a las millas de regreso recorridas, sobre la base del flete pactado en el presente contrato.

6. Para el fiel cumplimiento de todo lo estipulado en el presente contrato, se comprometen y obligan, mutuamente, las partes contratantes, en general con sus bienes habidos y por haber, y, en particular, con el cargamento, los Sres. **FLETADORES** ---------- ; y con sus fletes y nave, La Compañía. La responsabilidad en ningún caso, excederá, para cualquiera de las partes, del monto del flete estipulado, valor que será pagado por la parte infractora del presente contrato a la otra parte.

7a.- El embarque se efectuará a razón de 800 toneladas mínimo por día hábil y la descarga en New York será de 6,000 sacos de 100 libras más uno ó su equivalente por día ordinario, (con excepción de Domingos y feriados) debiendo a lo cual los Fletadores pagarán a la Compañía por demora (tiempo perdido) US$.150.00 y por tiempo ganado a su vez la Compañía pagará US$.75.00 por día ó fracción en parte proporcional, en cada operaciones.

LAS DEMAS CONDICIONES DE RIGE EN EL PRESENTE CONTRATO, SON LAS DE USO LEGAL [illegible].

En fé de lo cual, firmamos el presente documento, en el Callao, a los **dieciocho días** ------- del mes de **Noviembre** ---- de mil novecientos **cuarenta y cinco.**

[illegible]

Por la COMPAÑIA PERUANA DE VAPORES Y DIQUE DEL CALLAO,

Fletador.

Gerente.

TESTIGOS.

Compañía Peruana de Vapores y Dique del Callao

AND

Panama Rail Road Co.

IN CONNECTION WITH

DIRECT _____ Line

To NEW YORK

MARKS AND NUMBERS

TUMBI Refinada Product of Peru	7112	Bags grainy sugar on. 100 kgs. c.u.

-Shippers declare insurance has been covered.
-Flete je cargado: So.177.[illegible] peruvian currency, paid in [illegible]

Contents, Weight and Value Unknown

Freight from Ston to New York

Collect as per agreement.

Per 40 Cubic feet

Per 2,240 lbs. English

Per 1,000 kilos

(909 lbs Spanish 454 kilos)

Per 100 lbs. English

(101.4 lbs English 100 lbs Spanish)

40

Freight payable on the untaken weight as declared on this Bill of Lading, said weight being subject at the option of the carrying Companies to revision on discharge at destination, and freight recoverable in any event. Bill of Lading for New York must bear consignee's name or have note attached indicating who will dispatch the goods.

Freight to be paid on the gross weight or measurement respectively subject to correction, and in the case of freight rated goods, freight to be paid on the weight received for delivered at Carrier's option.

All goods of Value exceeding $ 200 per freight ton to be charged "AD VALOREM" in addition to the ordinary rate of freight.

No Bill of Lading signed for less than $ ____ in gold

TOTAL $ ____ in gold

Received payment

(For the Company)

(The Signature of the Agent here acknowledges only the amount prepaid).

THROUGH BILL OF LADING. (ISSUE 1120) No.

Received by The Compañía Peruana de Vapores y Dique del Callao

Ston, Peru.

Sua.del T.C.y Muelle de Ston (Agente Rep Tumbi S A)

Seven thousand and one hundred and twelve bags of sugar.

WEIGHT VALUE AND QUALITY UNKNOWN

BAGS NOT [illegible] OF [illegible] AGE PRODUCED BY FUMIGATION

CONSIGNED TO ORDER (Notify: Olaverria & Co. New York) NEW YORK

PER "UCAYALI"

Dated Ston, Peru, this 4 day of [illegible] 194[illegible]

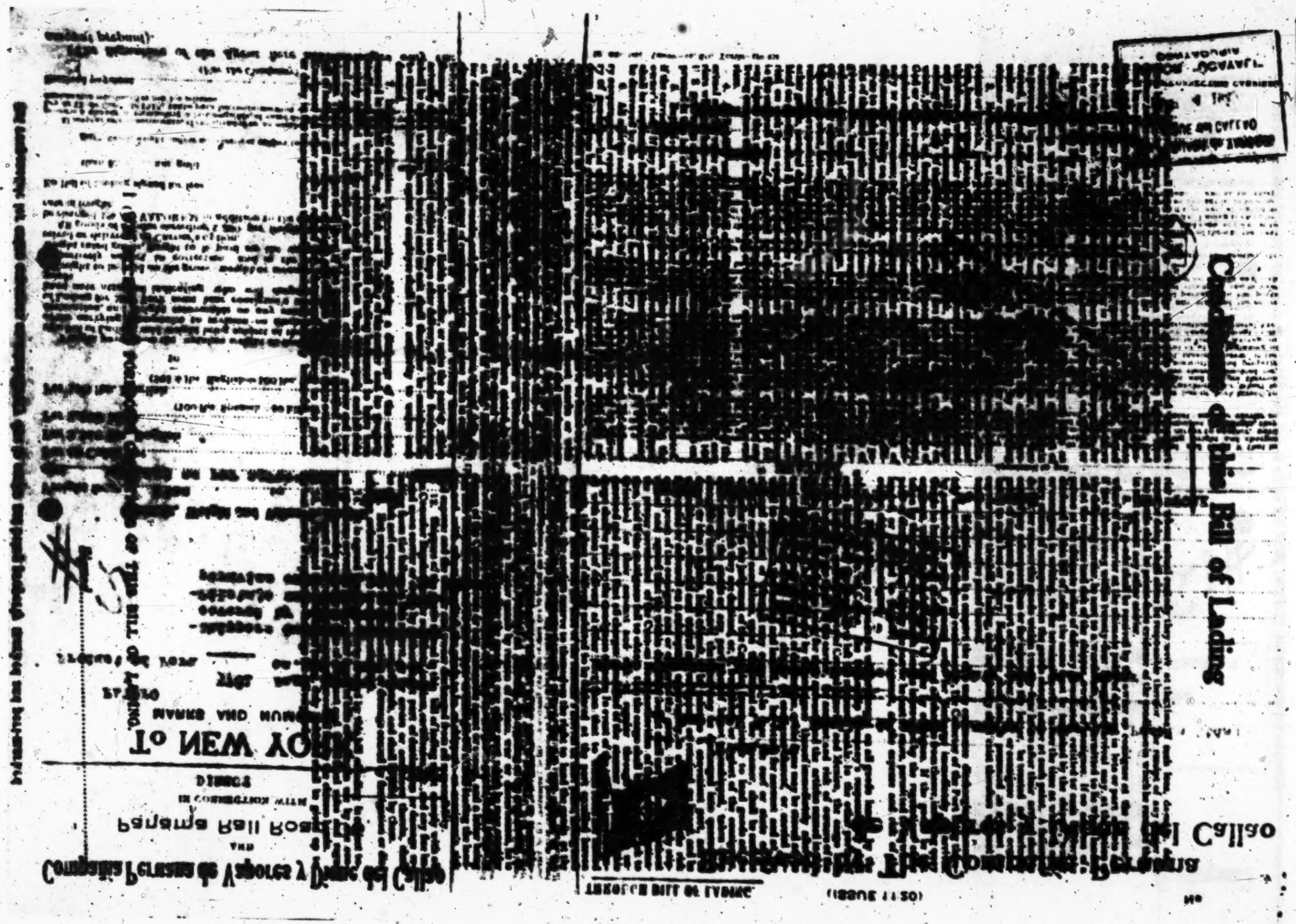
Shippers are requested to read this Contract, including Conditions

FOR [illegible]

COMPAÑIA PERUANA DE VAPORES Y DIQUE DEL CALLAO
MAR 4 1942
VAPOR "UCAYALI"
CONTADURIA

Conocimiento de Embarque

6



Compañía Peruana de Vapores y Dique del Callao

AND

Panama Rail Road Co.

IN CONNECTION WITH

922807

To NEW YORK

MARKS AND NUMBERS

PACKS

Product of Peru

3768 Bags [illegible]

cc. [illegible]

-Shippers declaration [illegible]
covered by [illegible]
-Filetajo [illegible]
peruvian [illegible]

#2

Contents, Weight and Value [illegible]

Freight from Callao to [illegible]

Per 40 Cubic feet

Per 2,240 lbs. English

Per 1,000 kilos

(100 lbs. Spanish=46 kilos)

Per 100 lbs. English

(101 4 lbs. English=100 lbs. [illegible])

10

Freight payable on the measure weight as declared on this Bill of Lading, said weight being subject at the option of the carrying steamships to revision on discharge at destination, and freight recoverable on any excess. Bills of Lading for New York must bear consignee's address, and have note attached indicating who will despatch the goods.

Freight to be paid on the gross weight or measurement respectively subject to deduction, and in the case of weight rated goods, freight to be paid on the weight delivered or delivered at Carrier's option.

All goods of a value exceeding £ 200 per freight ton will be charged 1% AD VALOREM in addition to the above rate of freight.

No Bill of Lading signed for less than $..... sm. gold

Rates, weight and measurement subject to [illegible]

Received payment .....

(For the Company)

(The Signature of the Agent here acknowledges only the amount prepaid).

Not responsible for extra expenses or misdelivery, due to [illegible]

TRANSCRIPT OF LIVERPOOL

TRANSHIPMENT BILL OF LADING (ISSUE 1/1/20) No.

Shipped by The Compañía Peruana de Vapores y Dique del Callao

[illegible]

Bill of Lading

[illegible]

Shippers are requested to read the Data on [illegible]

Port [illegible]

[illegible] Vapores
[illegible] del CALLAO
MAR 4 1942
MAOR "UCAYALI"
CONTADORES

10

Conditions of this Bill of Lading

I (WE) ACCEPT THE FOREGOING CONDITIONS OF THIS BILL OF LADING.

Signed .....

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Claim of Owner. 49

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF LOUISIANA,

New Orleans Division.

GALBAN LOBO CO., S. A. versus COMPANIA PERUANA DE VAPORES Y DIQUE DEL CALLAO and The Steamship "UCAYALI," her engines, boilers, etc.	No. 562 In Admiralty 50

AND NOW appears Republic of Peru, intervening for itself as owner of the S. S. UCAYALI, before this Honorable Court and makes claim to the said S. S. UCAYALI, her tackle, apparel, and furniture, as the same are proceeded against at the instance of GALBAN LOBO CO., S. A., the libelant, and the said claimant Republic of Peru, avers that it was at the time of the filing of the libel herein, and still is, the 51 true and bona fide sole owner of the said S. S. UCAYALI and that no other person is the owner thereof; wherefore it prays to defend accordingly. The filing of this claim is not a general appearance and is without prejudice to or waiver of all defenses and objections which may be available to respondent and claimant particularly but not exclusively sovereign immunity.

REPUBLIC OF PERU,
By (Sgd) F. OLSEN.

52 *Verification.*

STATE OF LOUISIANA
PARISH OF ORLEANS

BEFORE ME, the undersigned authority, personally came and appeared

FRANCISCO OLSEN

being by me first duly sworn, deposes and says that he is the Master of the S. S. UCAYALI, that he signed and executed the foregoing claim on behalf of the Republic of
53 Peru; that he has read said claim and knows the contents thereof to be true and correct.

(Sgd) F. OLSEN.

Sworn to and subscribed before me
this 9th day of April, 1942.

Signed Nicholes Callan
NOTARY PUBLIC
Notl. Publ.

54

Stipulation.

55

STATE OF LOUISIANA
PARISH OF ORLEANS

WHEREAS in the release bond filed on behalf of the Republic of Peru dated April 9th, 1942, upon which National Surety Corporation appeared as surety it was recited that an admiralty warrant issued in the case entitled Galban Lobo Co., S. A., v. Compania Peruana de Vapores y Dique Del Callao and The Steamship Ucayali, commanding the marshall to attach by foreign attachment the SS Ucayali, and

56

WHEREAS said recital was in error and said SS Ucayali was attached by process in rem

NOW, THEREFORE, it is agreed that said original bond might be amended by striking out the words "by process of foreign attachment" and substituting therefor the words "by process in rem", and that except as herein amended, all of the contents of said original bond are to remain in full force and effect.

REPUBLIC OF PERU
By Monroe & Lemann

57

NATIONAL SURETY CORPORATION
By S. L. Angno
Attorney-at-Law
SEAL

WITNESSES
T. Hebert
L. Crews

58

Order Extending Time.

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF LOUISIANA,

New Orleans Division.

GABAN LOBO CO., S. A. vs. COMPANIA PERUANA DE VAPORES Y DIQUE DEL CALLO, and the Steamship 59 "UCAYALI," her engines, boilers, etc.	No. 562 In Admiralty

To the Honorable the United States District Court for the Eastern District of Louisiana, New Orleans Division:

On motion of Republic of Peru, respondent and claimant, through its proctors, Monroe & Lemann, who appear herein for the special and limited purpose of presenting this motion and with full reservation and without waiver of any defenses and objection which may be available to mover, particularly but not exclusively, sovereign immu-
60 nity, and on suggesting to the Court that the return day to answer or otherwise plead to the libel herein expires on April 20th, and on further suggesting to the Court that mover requires an extension of at least twenty (20) days to present fully and adequately its pleas and defense to said libel, particularly, but not exclusively, the defense of sovereign immunity;

IT IS ORDERED that the time to answer or otherwise plead to the libel filed herein be and the same is hereby extended for a period of twenty (20) days from April 20th, 1942.

New Orleans, La. April 18th, 1942

Sgd. A. J. CAILLOUET
JUDGE

Order Extending Time.

61

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF LOUISIANA,
New Orleans Division.

GALBAN LOBO CO., S. A. vs. COMPANIA PERUANA DE VAPORES Y DIQUE DEL CALLO, and the Steamship "UCAYALI," her engines, boilers, etc.	No. 562 In Admiralty

62

To the Honorable the United States District Court for the Eastern District of Louisiana, New Orleans Division:

On motion of Republic of Peru, respondent and claimant through its proctors, Monroe & Lemann, who appear herein for the special and limited purpose of presenting this motion and with full reservation and without waiver of any defenses and objection which may be available to mover, particularly but not exclusively, sovereign immunity, and on suggesting to the Court that the extended return day to answer or otherwise plead to the libel herein expires on May 10, 1942, and on further suggesting to the Court that mover requires an extension of at least twenty (20) days to present fully and adequately its pleas and defenses to said libel, particularly, but not exclusively, the defense of sovereign immunity;

63

IT IS ORDERED that the time to answer or otherwise plead to the libel filed herein be and the same is hereby extended for a period of twenty (20) days from May 10, 1942.

New Orleans, La. May 8, 1942.

Sgd. Wayne G. Borah

Monroe & Lemann
Nicholas Callan
Proctors for Republic of Peru

64

Order Extending Time.

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF LOUISIANA,
New Orleans Division.

GALBAN LOBO CO., S. A. vs. COMPANIA PERUANA DE VAPORES Y DIQUE DEL CALLO, and the Steamship "UCAYALI," her engines, boilers, etc.	No. 562 In Admiralty

65

To the Honorable the United States District Court for the Eastern District of Louisiana, New Orleans Division:

On motion of Republic of Peru, respondent and claimant, through its proctors, Monroe & Lemann, who appear herein for the special and limited purpose of presenting this motion and with full reservation and without waiver of any defenses and objection which may be available to mover, particularly but not exclusively, sovereign immunity, and on suggesting to the Court that the return day to answer or otherwise plead to the libel herein expires
66 on May 30th, 1942, and on further suggesting to the Court that mover requires an extension of at least thirty (30) days to present fully and adequately its pleas and defenses to said libel, particularly, but not exclusively, the defense to sovereign immunity;

IT IS ORDERED that the time to answer or otherwise plead to the libel filed herein be and the same is hereby extended for a period of twenty (20) days from May 30th, 1942.

New Orleans, La. May 29th, 1942

Sgd. A. J. Caillouet
U. S. District Judge

Monroe & Lemann
Attys. for Mover.

Notice of Motion. 67

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF LOUISIANA,

New Orleans Division.

GALBAN LOBO CO., S. A. versus COMPANIA PERUANA DE VAPORES Y DIQUE DEL CALLAO and The Steamship "UCAYALI," her engines, boilers, etc.	No. 562 In Admiralty 68

Sirs:

PLEASE TAKE NOTICE that upon the annexed affidavit of *Nicholas Callan* verified the 17th day of June, 1942, the letter of His Excellency M. de Freyre y Santander, Ambassador of the Republic of Peru to the United States, to the Honorable Sumner Welles, Acting Secretary of State, 69 dated April 15, 1942, the letter of the Honorable Sumner Welles to the Honorable Francis Biddle, Attorney General of the United States, dated May 5, 1942, and the letter of the Honorable Francis Biddle to Herbert W. Christenberry, Esq., United States Attorney for the Eastern District of Louisiana, dated May 8, 1942, copies of which will be submitted to the Court upon the argument of this motion, by the United States Attorney for the Eastern District of Louisiana, and upon the suggestion of immunity filed by Herbert W. Christenberry, Esq., United States Attorney for the Eastern District of Louisiana, and the libel and complaint heretofore filed herein, the undersigned

70 will move this Court at a Stated Term for the hearing of motions, appointed to be held in the United States Court House, on the 24th day of June, 1942, at ten-thirty o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, for an order dismissing the suit of Galban, Lobo Co., S. A. against Compania Peruana De Vapores y Dique del Callao and the steamship Ucayali, her engines, etc., for want of jurisdiction on the ground that said suit is against the property of a friendly foreign sovereign nation, to wit; the Steamship Ucayali, not subject to the jurisdiction of this Honorable Court and immune from suit
71 therein, and for such other and further relief as to the Court may seem just in the premises.

Dated, New Orleans, La., June 17th, 1942.

Yours, etc.,

MONROE & LEMANN,
Proctors for the Republic of Peru,
appearing specially,
Whitney Building,
New Orleans, La.

72 To:

TERRIBERRY, YOUNG, RAULT & CARROLL, Esqs.,
Proctors for Libelant,
Whitney Bank Building,
New Orleans, La.

HERBERT W. CHRISTENBERRY, Esq.,
United States Attorney for the
Eastern District of Louisiana,
United States Court House,
New Orleans, La.

Affidavit of Nicholas Callan, in Support of Motion. 73

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF LOUISIANA,

New Orleans Division.

GALBAN LOBO CO., S. A. versus COMPANIA PERUANA DE VAPORES Y DIQUE DEL CALLAO and The Steamship "UCAYALI," her engines, boilers, etc.	No. 562 In Admiralty 74

State of Louisiana, }
Parish of Orleans, } ss.:

Nicholas Callan, being duly sworn, deposes and says: He is a member of the firm of Monroe & Lemann, proctors in the above entitled admiralty suit for the Republic of Peru, which is the owner of the Peruvian steamship Ucayali, and appears specially herein solely for the purpose of this motion and not otherwise. 75

Your deponent's firm has been authorized in behalf of the Government of the Republic of Peru and by His Excellency M. de Freye Y Santander, Ambassador of the Republic of Peru to the United States, to make this motion for the dismissal of the above entitled action for want of jurisdiction and to press the immunity of the steamship Ucayali as a vessel owned by the Republic of Peru, a friendly sovereign nation.

This affidavit is made in support of a motion to dismiss the libel in the above entitled action for want of jurisdiction and to present to this Court the sovereign immunity

of the Republic of Peru and its property, to wit, the Peruvian Government owned vessel Ucayali, from process and suits in the courts of the United States.

The above entitled action was instituted on the 30th day of March, 1942, by the libelant against the steamship Ucayali, her engines, boilers, etc., and against Compania Peruana de Vapores y Dique del Callao, agent for the Republic of Peru in the operation of its steamship Ucayali, to recover the sum of $100,000 as the result of damages alleged to have been sustained by the libelant because of the discharge of the vessel's cargo of sugar originally de-
77 stined to the port of New York, at New Orleans due to war conditions, to the orders of the Peruvian Government, and to the exercise of the master's discretion, all pursuant to the terms of certain bills of lading issued for the goods. The libelant claims to be the owner of the sugar cargo then on board the steamship Ucayali and entitled to the delivery of the goods, at the port of New York. Libelant claims alternatively that it is entitled to a return of the freight theretofore claimed to have been paid to the respondent.

As appears from the affidavit, sworn to at Lima, Peru, the 20th day of April, 1942, of Manuel V. Galdo, Captain of the Peruvian Navy and duly commissioned Director of
78 the Port Captain's Bureau (the original of which affidavit and translation are annexed hereto as Exhibits A and A1), the Peruvian Steamship Ucayali was formerly the Yugoslavian steamship Neti, owned prior to August, 1937, by the Marovic Steamship Company, Ltd. The Government of Peru purchased the vessel by a contract of sale dated at London, England, August 24, 1937. A true copy of the purchase agreement is annexed hereto, marked Exhibit B and by this reference made a part hereof. The vessel was duly delivered, and a bill of sale executed on November 6, 1937, the bill of sale being executed before the Consulate General of the Kingdom of Yugoslavia in Triest, Italy. A true copy of the bill of sale is annexed hereto, marked

Exhibit C and by this reference made a part hereof. Thereafter, the Ucayali made a voyage to Peru under provisional letters patent or certificate of registry issued by the Peruvian Consulate at Rotterdam, Holland, on November 12, 1937, (a true copy of the provisional letters patent is annexed hereto, marked Exhibit D and by this reference made a part hereof) and the vessel has continuously remained in the possession ownership and service of the Republic of Peru under the agency for the benefit of the Republic of Peru, of the respondent, Compania Peruana de Vapores y Dique del Callao.

80 As stated, the steamship Ucayali is and has continuously been since November 6, 1937, the property of a friendly sovereign nation and is and is to be employed in the service and interest of the whole Peruvian nation and not for the benefit of any individual. A suit against the steamship Ucayali is a suit against the property of a friendly foreign sovereign nation.

As appears by the records in Court, the steamship Ucayali was arrested by the United States Marshal for the Eastern District of Louisiana on the 30th day of March, 1942, and such arrest was made by the Marshal pursuant to process issued against the vessel in the above entitled suit. 81

The arrest of the steamship Ucayali by the United States Marshal for the Eastern District of Louisiana at the instance and request of the above named libelant was effected without the consent of the Peruvian Government or any branch, agency or accredited representative. The arrest in fact was made by the Marshal at the instance of the above named libelant notwithstanding the fact that the ownership of the vessel by the Government of the Republic of Peru is a matter of public knowledge. This arrest was likewise made notwithstanding the immunity of the vessel from suit or arrest and without waiver of such immunity or consent of the Peruvian Government to any of its property being sued.

82 *Affidavit of Nicholas Callan.*

On April 14, 1942, His Excellency M. de Freyre y Santander, Peruvian Ambassador to the United States, filed with the Honorable Sumner Welles, Acting Secretary of State of the United States, a letter presenting the attitude of the Peruvian Government in respect of the status of the steamship Ucayali and asserting the interest of the Peruvian Government in said vessel and the immunity of said vessel from process, with the plea that the suit herein be dismissed and the arrest of the Peruvian steamship Ucayali be vacated.

83 The Honorable Sumner Welles, Acting Secretary of State of the United States, on the 5th of May, 1942, requested the Honorable Francis Biddle, Attorney General of the United States of the District of Louisiana to instruct the United States to appear in this proceeding and present to the Court a certified copy of the note of April 15, 1942, of the Peruvian Ambassador and "to say that this Department accepts as true the statements of the Ambassador concerning the steamship *Ucayali* and recognized and allows the claim of immunity."

Annexed hereto and marked Exhibit E is a copy of the note dated April 15, 1942, from the Peruvian Ambassador to the Acting Secretary of State of the United
84 States. The exhibits referred to in the aforementioned note or photostatic copies will be presented to this Court with the suggestion of immunity filed by the United States Attorney for the Eastern District of Louisiana.

The United States Government recognizes that the Republic of Peru is a friendly foreign sovereign government and that His Excellency W. de Freyre y Santander is the duly accredited Ambassador of the Republic of Peru to the United States, and therefore, under the rule of comity and the circumstances presented herein, it is respectfully submitted that the libel should be dismissed and the arrest vacated under the authority of Ex Parte Muir, 254 U. S. 522; *The Navemar,* 102 F. (2d) 444; *Sullivan* v. *State of*

Sao Paulo, 36 F. Supp. 503 affirmed 122 F. (2d) 355; *Katingo Hadjipatera,* 40 F. Supp. 546; *Maliakos,* 41 F. Supp. 697; *Ioannis P. Goulandris,* 40 F. Supp. 924; and *Margaret-Tassia,* 41 F. Supp. 699.

No previous application for the relief sought herein has heretofore been made in the above entitled action.

WHEREFORE, The Republic of Peru respectfully prays that this Court decline jurisdiction in the above entitled suit and that an order be made herein dismissing the above entitled action for want of jurisdiction on the ground that such suit is brought against the property on a friendly 86
foreign sovereign nation, to wit, the steamship Ucayali, not subject to the jurisdiction of this Court and immune from suit therein, and that a further order be entered vacating the arrest of the steamship Ucayali pursuant to process issued against the vessel in the above entitled action, with costs.

Sgd. NICHOLAS CALLAN.

Sworn to before me this
17th day of June, 1942.

WATTS K. LEVERICH,
Notary Public. 87

Exhibit A—Annexed to Foregoing Affidavit.

[redacted]

No. 562-Admiralty
U. S. DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION
FILED JUN 17 1942
Dep. Clerk.

AFFIDAVIT

YO, Capitán de Fragata, MANUEL V. GALDO, por el presente afirmo que ejerzo el cargo de Director de Capitanías, desde el 21 de Diciembre de 1939 y que por razón del mismo tengo conocimiento oficial de los hechos siguientes:

PRIMERO.- Que el vapor "UCAYALI", ex-"NEFI", fué adquirido por el Gobierno del Perú, de la firma naviera MAROVEC STEAMSHIP COMPANY LTD., según convenio celebrado en Londres en 24 de Agosto de 1937, con intervención de la Legación del Perú en esa Capital, y de los Corredores C.W.KELLECK & Cº LTD.

SEGUNDO.- Que la entrega del buque antes citado y la firma del documento de compra del mismo se realizaron el 6 de Noviembre de 1937, por ante el Consulado General del Reino de Yugoeslavia en Trieste (ITALIA).

TERCERO.- Que consta del documento expedido por el Consulado General del Reino de Yugoeslavia en Rotterdam (HOLANDA), con fecha 10 de Noviembre de 1937, que el barco materia de la compra, se hallaba libre de toda hipoteca ó afectación y que su matrícula yugoeslava había sido debidamente cancelada.

CUARTO.- Que el citado ex-"NEFI", hoy vapor "UCAYALI", viajó al Perú bajo patente provisional expedida por el Consulado del Perú en Rotterdam en 12 de Noviembre de 1937.

QUINTO.- Que el textés vetusto-nombrado vapor "UCAYALI", desde su arribo al Perú fué entregado bajo el régimen establecido de administración a la Compañía Peruana de Vapores y Dique del Callao, siendo los provechos y utilidades que de tal administración se derivan como menos una comisión de administración, del beneficio del Gobierno del Perú.

SEXTO.- Que acompaño el presente copia fotostática de los documentos mencionados en el presente Affidavit.

Galdo

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En fé de la cual y en ejercicio de las funciones del cargo que ejerzo, expido el presente bajo juramento.

Callao á diecicho días del mes de Abril del año de mil novecientos cuarentidos.

Alvarado

REPUBLIC OF PERU
PROVINCE OF LIMA
CITY OF LIMA } SS:
EMBASSY OF THE UNITED
STATES OF AMERICA

Subscribed and sworn to before me, this

20 th day of April, 1942.

John C. Shillock, Jr.,
Consul of the United States of America.
Fee $2.00 - S/ 13.00 Peruvian Cy.
Service no. 99

AMERICAN CONSULATE GENERAL
CALLAO-LIMA, PERU

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Exhibit A-1—Annexed to Foregoing Affidavit.

[redacted]

[redacted]

I Manuel V.Golda Captain of the Peruvian Navy do by these presents affirm that I am the duly commissioned Director of the Port Captain's Bureau as of 26th December 1937 and because of the performance of my duties as such have official knowledge of the following facts:

1.- That the steamer [redacted] ex-"[redacted]" was purchased by the Peruvian Government from the [redacted] STEAMSHIP COMPANY LTD., under a purchase agreement entered into in the City of London on the 24th day of August 1937 with the intervention of the Peruvian Legation in said Capital City and the firm of brokers styled C.N.KELLOCK & Cº.Ltd.

2.- That the delivery of the vessel aforementioned and the date upon which the [redacted] of sale of same took place on Nov.6-1937 before the Consulate General of the Kingdom of Yugoslavia in Trieste,Italy.

3.- That as per the instrument issued by the Yugoslavia Consulate federal at [redacted] bearing date Nov.10th 1937 the vessel which was the [redacted] purchase was free of any encumbrances and [redacted] registry had been duly cancelled.

4.- That the said ex-[redacted] "UCAYALI" travelled to Peru under a provisional letters patent issued by the Peruvian Consulate at Rotterdam on Nov.17th 1937.

5.-That the aforementioned "UCAYALI" was turned over unto the Compañia Peruana de Vapores upon date of arrival to Peru.Under the existing administration arrangement all profits derived therefrom less an administrative commission being for the benefit of the Peruvian Government.

6.-That I attach hereto photostatic copies of all documents referred to in the present Affidavit, in witness thereof and within the performance of my official duties I issue these presents under oath.

Callao eighteenth day of April of the year nineteenhundred and

Exhibit A

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forty two.

(Signed)
Manuel V. Galdo

(A seal which reads:)
(Ministry of Marine and Aviation -)
(Bureau of Port Captains.)

REPUBLIC OF PERU)
PROVINCE AND CITY OF)
LIMA) SS:
EMBASSY OF THE UNITED)
STATES OF AMERICA)

Subscribed and sworn to before me, this 20th day of April, 1942.

(Signed)
John C. Shillock, Jr.
Consul of the United States of America.

Fee $2.00 - S/ 13.00 Peruvian Cy.
Service No.990

I, David H. Potter, do hereby declare under oath that the within translation of an Affidavit made by Capt. Manuel V. Galdo is, according to my best knowledge of the English and Spanish languages, a true and faithful English translation from its text in Spanish.

D. H. Potter
David H. Potter.

REPUBLIC OF PERU
PROVINCE OF LIMA
CITY OF LIMA
EMBASSY OF THE UNITED
STATES OF AMERICA

Subscribed and sworn to before me, this 20th day of April, 1942.

John C. Shillock, Jr.
Consul of the United States of America.

Fee $2.00 - S/ 13.00 Peruvian Cy.

Service No.994

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PAGE

Exhibit B—Annexed to Foregoing Affidavit.

COPY.

C. W. KELLOCK & CO., LTD.

(Formerly of the Institute of Chartered Accountants)

Brokers for the Sale, Purchase and Construction of Ships, Steamers, &c.
Valuers, Auctioneers.

BROKERS TO THE MARSHAL OF THE ADMIRALTY BY APPOINTMENT
VALUERS TO THE ADMIRALTY.

27-31 ST. MARY AXE, LONDON, E.C.3
CUNARD BUILDING, LIVERPOOL, 3.

Memorandum of Agreement made this [illegible] day of [illegible]

between [illegible]

[illegible] hereinafter called the [illegible]

of the one part, and [illegible] hereinafter called the [illegible]

of the other part.

No. 1.—The said Vendors agree to sell and the said Purchasers agree to buy [illegible]

to the conditions hereinafter expressed [illegible]

named the [illegible]

and 1706.46 tons net register, at present on passage and bound to [illegible]

[illegible] to be delivered to the said Purchasers [illegible]

on their approval on inspection of hull, [illegible] and including the sum of [illegible]

[illegible]

with everything belonging to her on board and on shore (including the [illegible]

as provided) including spare gear and chronometer (if any).

No. 2.—The said Purchase Money shall be paid to [illegible]

A deposit of 10 per cent. to be paid on signing of [illegible]

Kellock & Co. Limited, to be held by them [illegible]

balance within [illegible] five [illegible] business days [illegible]

of the requirements of Clause No. 5 hereof.

No. 3.—All unbunkered provisions, [illegible]

[illegible] lubricating oil (whether in tanks or [illegible]

shall be paid for by Purchasers at the current market [illegible]

Exhibit C

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No. 4.—The Vendors shall, at their own risk [illegible], open up (and afterwards close up) the engines, boilers and tanks for inspection afloat, and Purchasers shall commence examination within [illegible] hours of receiving notice of vessel's readiness for inspection. The Purchasers shall notify Vendors in writing their acceptance or rejection of the said vessel within twenty-four hours after completion of said inspection. If Purchasers decline the vessel on inspection afloat, this Agreement shall be void, and the deposit shall be returned to Purchasers, but if they accept the vessel, the purchase shall thereupon become absolute.

No. 5.—After Purchasers' approval of vessel on inspection afloat, as referred to in Clause No. 4, the Vendors shall, as soon as possible, at their own risk and expense, place the vessel in dry-dock and draw tail-end shaft for Purchasers' examination. If the bottom, tail-end shaft, propeller or any other under-water part be found damaged, broken or defective, the Vendors shall make good to the satisfaction of Lloyd's Surveyor only such damage or defects as may be necessary for the maintenance of present class without reference to Special Survey, and all expenses in connection with the dry-docking and undocking of vessel shall be borne by the Vendors. [illegible] such damage or defects to be discovered to the bottom, tail-end shaft, propeller or other under-water part, the expenses in connection with the dry-docking and undocking of vessel shall be borne by the Purchasers. The expense of drawing and replacing the tail-end shaft shall be borne by the Purchasers unless the tail-end shaft shall be found damaged or defective, in which case it shall be borne by the Vendors.

No. 6.—Vendors shall at the time of transfer, hand to Purchasers all plans of the vessel, Lloyd's classification certificates, anchor and chain certificates, etc., which may be in their possession.

No. 7.—The Wireless Installation, Auto Alarm, Direction Finder and Submarine Signalling Apparatus (if any) are not included in the sale. The Purchasers shall make their own arrangements with the owners of such Installation and or Apparatus prior to vessel's dry-docking in accordance with Clause No. 5, and failing their so doing the Vendors shall be at liberty to have same removed prior to delivery of vessel to Purchasers.

No. 8.—The vessel is sold subject to all restrictions of the Dominion Government or any Departments of such State now in force, or which may be enacted between the date of sale and the time fixed for the completion thereof.

No. 9.—Should the vessel [illegible] a total or constructive total loss prior to the time fixed for delivery to Purchasers, this Agreement shall be void and the deposit [illegible] returned to Purchasers.

No. 10.—On the payment of the whole of the agreed Purchase Money, together with [illegible] payable by Purchasers under this Agreement, the Vendors shall, within [illegible] herein specified, and at the expense (viz.: Consular and Notarial fees, if any) of the Purchasers, execute, or procure to be executed to them or their nominees, a legal transfer of the vessel free from all encumbrances and maritime liens, and the vessel with everything [illegible] her as herein-mentioned, shall be thereupon delivered to them. Subject to the [illegible] mentioned herein, the vessel and everything that is sold with her shall be taken with all [illegible] and errors of description, without any allowance or abatement for deficiency, [illegible] of description in advertisements, circulars, inventories, or otherwise, and [illegible] expense of the Purchasers from the time the balance of the Purchase Money [illegible]

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No.4a Sender undertakes, after approval of vessel on inspection flight in Trieste as referred to in clause No.4, to forthwith despatch vessel to a U.K. port in ballast or with cargo at their option and to deliver the vessel to Purchasers in a U.K. port after drydocking in accordance with Clause No.5, free of average and with class fully maintained.

Any dities, taxes or fees payable to the Yugoslav Government on account of vessel from Average Bunker [illegible] are for Vendors account and any dutiez, taxes or fees payable to the foreign Government on Bar Purchasers account.

It is understood that Vendors have already fitted [illegible] and two winches.

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payable, whichever is the earlier. Should the whole of the Purchase Money not be paid in the manner and within the time herein specified and/or if any other default shall be made by the Purchasers in the execution of this Agreement, the deposit in full shall be immediately forfeited to the Vendors, to whom Messrs. C. W. Kellock & Co. Limited are hereby authorised to pay it, and the vessel may, notwithstanding negotiations and without notice, be resold by Vendors by public or private sale, and all expenses and any loss arising from the resale together with interest thereon at the rate of £5 per cent. per annum, shall be paid to the Vendors by the present Purchasers. If default shall be made by the Vendors in the execution of a legal transfer, or in delivery of the vessel, in the manner and within the time herein specified, Messrs. C. W. Kellock & Co. Limited are hereby authorised to return forthwith to the Purchasers the deposit paid, and unless the default shall have arisen from events over which the Vendors have no control, the Vendors shall, in addition, make due compensation for the damages (if any) caused to the Purchasers by non fulfilment of this Agreement.

[illegible] If any dispute or difference should arise in connection with this Agreement, the same shall be referred to a single Arbitrator in London, to be appointed by the parties hereto; but if the parties cannot agree upon a single Arbitrator, they shall each appoint an Arbitrator, and the Arbitrators so appointed shall appoint an Umpire, and the award of such Arbitrator or Umpire shall be final and binding upon the parties hereto, and may for the purpose of this Agreement be made a Rule of Court. Save as aforesaid the provisions of the Arbitration Acts 1889 to 1934, and of any Statutory Amendment thereof shall apply.

Brokerage as agreed, is due from the Vendors to Messrs. C. W. Kellock & Co. Limited, upon the signing of this Contract.

[illegible] FOR PURCHASERS GREAT BRITAIN

Witness [illegible] (SIGNED) [illegible] BEVAVIDES

[illegible]

[illegible] VIC [illegible] SHIPPING COMPANY, LTD.

Witness (SIGNED) [illegible]

F.R.D. [illegible]

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Exhibit C—Annexed to Foregoing Affidavit.

Form No.

BILL OF SALE. (Body Corporate.)

No. 79A

NETT[illegible] A D JONES

[illegible]

[illegible]

[illegible]

[illegible]

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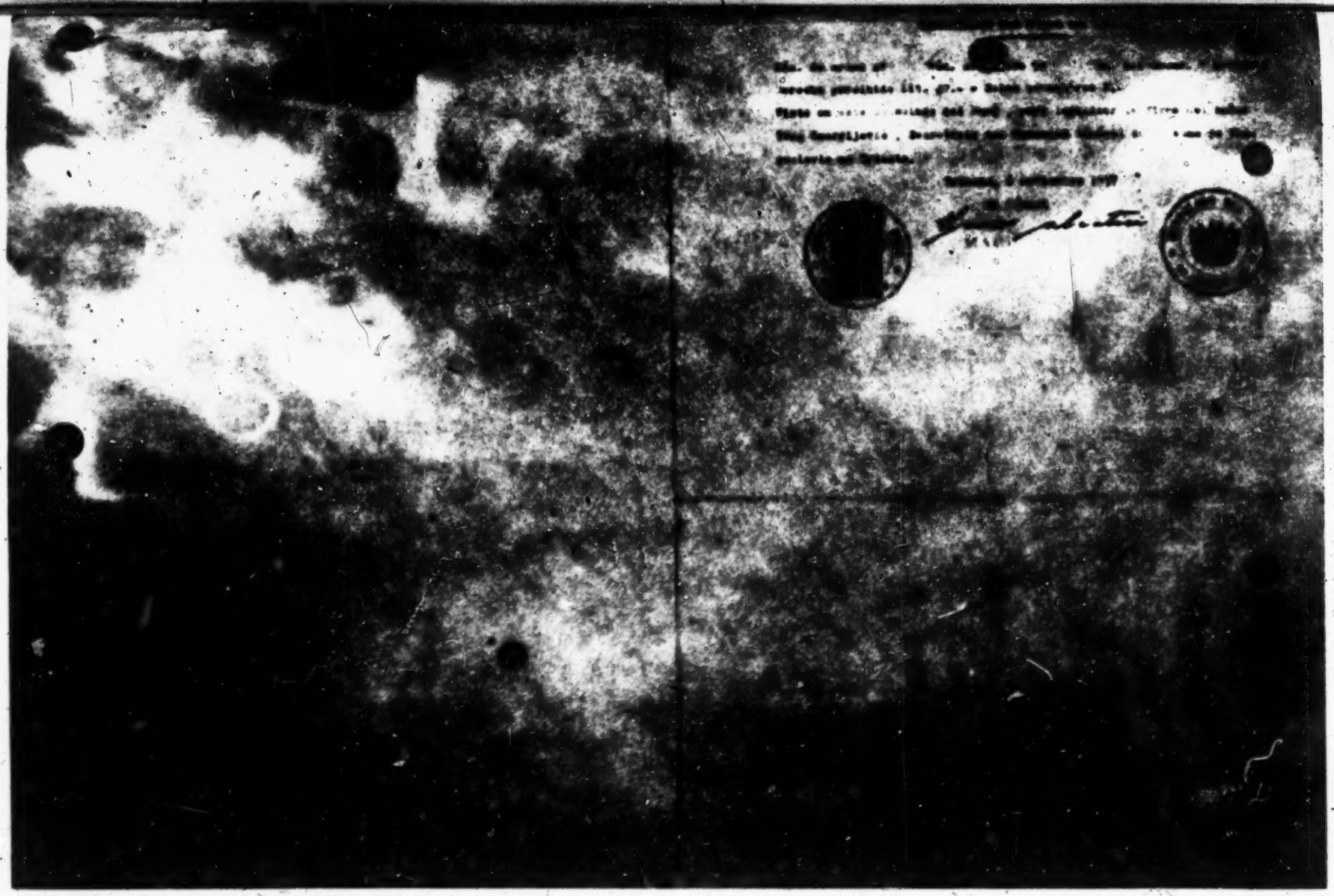

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Exhibit D—Annexed to Foregoing Affidavit.

ONSULADO DEL PERU

CAD.

ROTTERDAM,

GONZALO ARRIZ, CONSUL DEL PERU EN ROTTERDAM,

Por cuanto Don D.W.Potter, ha solicitado en este Consulado patente provisional de navegación para el buque a vapor "ALTI" de 2768.34 toneladas brutas de registro, matriculado primitivamente en el puerto de Sisak (Yugoeslavia), cuyo capitán es por ahora el mismo señor Don D.W.Potter y va a zarpar previamente, con tripulación provisional, de este puerto de Rotterdam con destino a diversos puertos europeos y norteamericanos para continuar viaje al puerto del Callao, para inscribirse en la matrícula de la marina mercante nacional.

(El buque a vapor "ALTI" que, llevará en adelante el nombre de "U C A Y A L I", ha sido comprado por el Gobierno del Perú, representado al efecto por Don D.W.Potter, Superintendente Marítimo de la Compañía Peruana de Vapores.)

Por tanto, en uso de las facultades de que me halla investido, he venido en expedir al dicho buque a vapor "U C A Y A L I" ex "ALTI" la presente patente provisional de navegación, para que en virtud de ella pueda enarbolar el pabellón del Perú en los viajes que hasta su llegada al Callao haga, la cual patente provisional será entregada para su cancelación al Capitán del mencionado puerto, llegada que sea la nave.

En consecuencia, ruego a todos los comandantes de los buques de la armada y mercantes de la República, a los capitanes de los puertos y otros cualesquiera jefes o dependientes de la misma, no pongan embarazo ni causen molestia o detención al expresado Don D.W.Potter o su buque, antes bien le auxilien con lo que necesitare para su regular navegación.

Y a las autoridades de los estados amigos o neutrales, ruego que, asimismo, no le impidan su libre navegación, salida o detención, en los puertos a que por algún accidente se acogiere, permitiéndole se provea de lo que necesitare, cuyo fin le expido la presente, firmada por mí y sellada con el sello del Consulado del Perú en Rotterdam a los doce días del mes de noviembre de mil novecientos treintisiete.

CONSULADO DEL PERU EN ROTTERDAM

G.Arriz
Cónsul

No.de orden 1
Exenta de derechos consulares por tratarse de una nave adquirida por el Gobierno del Perú

CONSULADO DEL PERU EN ROTTERDAM

Wm Boyd
Master

Certificado
OC 083677

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Letter Requesting Continuance. 115

TERRIBERRY, YOUNG, RAULT & CARROLL

Whitney Bank Building
New Orleans

June 27, 1942

A. Dallam O'Brien, Jr., Esquire
Clerk, United States District Court
New Orleans, Louisiana

Galban Lobo Co., S. A. versus Compania
Peruana de Vapores Y Dique Del Callao 116
and the Steamship UCAYALI, her Engines,
Boilers, etc.—No. 562 in Admiralty

Dear Mr. O'Brien:

I confirm conversation this morning in which I advised you that Mr. Callan of Messrs. Monroe & Lemann agrees to a continuance of his motion in the above case, which is based on a suggestion yet to be filed by the United States Attorney, from Wednesday, July 1st, to Wednesday, July 8th. I understand that you will arrange this continuance. Thank you very much.

117

Yours very truly,

JOS. M. RAULT.

JMR:L
CC: Mr. Nicholas Callan
c/o Messrs. Monroe & Lemann
Whitney Building
New Orleans, Louisiana

118 **Suggestion of Immunity.**

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF LOUISIANA,

New Orleans Division.

GALBAN LOBO CO., S. A. *Libellant,* against COMPANIA PERUANA DE VAPORES Y DIQUE DEL CALLAO and The Steamship "UCAYALI," her engines, boilers, etc. *Respondents.*	No. 562 In Admiralty

119

To the Honorable the Judges of the United States District Court for the Eastern District of Louisiana:

Now comes Herbert W. Christenberry, Esq., United States Attorney for the Eastern District of Louisiana, and at the direction of the Attorney General of the United States, respectfully files this Suggestion of Immunity with respect to the Peruvian Steamship UCAYALI, and informs the Court as follows:

120

I. Under date of April 15, 1942, the Peruvian Ambassador presented to the State Department a claim of sovereign immunity for the Peruvian Steamship UCAYALI, which vessel is owned and in the possession of his Government and which was sent to the port of New Orleans by the Ministry of Marine.

II. Under date of May 5, 1942, the State Department having accepted as true the statements of the Peruvian

Ambassador and having recognized and allowed the claim of immunity for the said Steamship UCAYALI, requested the Attorney General of the United States to instruct me to present to this Court the attached certified copy of the Ambassador's note and to say that the State Department accepts as true the statements of the Ambassador concerning the Steamship UCAYALI, and recognized and allows the claim of immunity.

III. Under date of May 8, 1942 the Attorney General of the United States forwarded to the undersigned the original letter from the State Department to the Attorney 122
General, together with the attached certified copy of the Ambassador's note to the Acting Secretary of State and directed that I, by appropriate suggestion, present to this Court the claim of immunity made on behalf of the Peruvian Government and subsequently recognized and allowed by the State Department to the end that this immunity may be recognized by this Court.

IV. Attached hereto and made a part hereof are the original letter from the State Department together with certified copy of the note of the Peruvian Ambassador transmitted therewith, and the original letter from the 123
Attorney General referred to above in Paragraphs I, II and III.

V. By reason of the premises it has been conclusively determined that the said Peruvian Steamship UCAYALI Proceeded against herein, is immune from the jurisdiction and process of this Court and the claim of immunity having been "recognized and allowed by the Executive Branch of the Government, it is the duty of this Court to release the vessel upon appropriate suggestion by the Attorney General of the United States, or other officer acting under his direction". *The Navemar,* 303 U. S. 68.

124 *Suggestion of Immunity.*

WHEREFORE, the undersigned by direction of the Attorney General of the United States advises this Court of the foregoing communications and suggests and prays that the claim of immunity made on behalf of the said Peruvian Steamship UCAYALI and recognized and allowed by the State Department be given full force and effect by this Court; that the said vessel proceeded against herein be declared immune from the jurisdiction and process of this Court; that any process of this Court heretofore issued against the said vessel be vacated; and that said vessel be released
125 from any arrest, attachment, seizure or other process that may have been or may hereafter be issued against or served on the said vessel or those in charge of her; and for such other and further relief as to the Court may seem just.

Signed HERBERT W. CHRISTENBERRY
UNITED STATES ATTORNEY
EASTERN DISTRICT OF LOUISIANA

New Orleans, Louisiana,
June 29th, 1942.

126

Papers Annexed to Suggestion of Immunity. 127

OFFICE OF THE ATTORNEY GENERAL

WASHINGTON, D. C.

May 8, 1942

Herbert W. Christenberry, Esq.,
United States Attorney,
New Orleans, La.

Re: Peruvian Steamship UCAYALI

Sir: 128

I am in receipt of a letter from the State Department, dated May 5, 1942, the original of which is enclosed herewith, requesting me to instruct you to present to the United States District Court for the Eastern District of Louisiana a claim of Immunity, made on behalf of the Peruvian Government with respect to the Peruvian Steamship UCAYALI, which claim has been recognized and allowed by the State Department.

According to the note from the Peruvian Ambassador, the said Steamship UCAYALI is now in the port of New Orleans and has been libeled in an action, *in rem,* in the United States District Court for the Eastern District of 129 Louisiana in an action entitled Galban, Lobo Co., S. A. Versus Compania Peruana de Vapores y Dique Del Callao, and the Steamship UCAYALI, her engines, boilers, etc.

I direct, therefore, that by appropriate suggestion you present the claim of immunity, made on behalf of the Peruvian Government and subsequently recognized and allowed by the State Department, to the attention of the United States District Court for the Eastern District of Lousiana, presenting to said Court a copy of the communication of the Peruvian Ambassador and of the letter from the State Department to me, and that you take all appropriate steps to the end that this immunity may be recognized by the said Court.

130 *Papers Annexed to Suggestion of Immunity.*

The original letter from the State Department, dated May 5, 1942, and the certified copy of the note from the Peruvian Ambassador to the State Department, dated April 15, 1942, transmitted therewith, are enclosed herewith for presentation to the Court, together with your Suggestion of Immunity.

Respectfully,

Signed FRANCIS BIDDLE,
FRANCIS BIDDLE,
131 Attorney General.

Enclosures

DEPARTMENT OF STATE

WASHINGTON

May 5, 1942

In reply refer to
Le 311.2354 Ucayali/1

My dear Mr. Attorney General:

132 Enclosed herewith is a copy of a note of April 15, 1942 from the Peruvian Ambassador concerning the libeling of the Peruvian steamship UCAYALI in the port of New Orleans. It is stated in the note that:

> "The steamship Ucayali is owned by and is in the possession of the Peruvian Government but has been libeled in an action in rem in the United States District Court, Eastern District of Louisiana, New Orleans Division, in an action entitled 'Galban, Lobo Co., S. A. versus Conpañia Peruana de Vapores y Dique del Callao and the steamship Ucayali, her engines, boilers, etc.' "

It is further stated in the note that:

> "The vessel is under engagement to transport materials for the United States Army and thereafter she will be, as heretofore, engaged in the transportation of merchandise produced in the Republic of Peru to the United States or to other friendly countries."

The Department has been orally informed by the Embassy that the *Ucayali* was purchased by the Peruvian Government in 1937 from Yugoslavia and was transferred 134
from Belgian registry; that it has been operated by the Government of Peru through the Cia Peruana, and that the orders to put in at New Orleans were issued by the Ministry of Marine.

The

The Honorable
FRANCIS BIDDLE,
Attorney General.

The Department has also been orally informed by an official of the Maritime Commission that the vessel was ordered by the Peruvian Government to go into the port 135
of New Orleans instead of the port of New York, its original destination, because of the submarine menace. This official also stated that the libelant in this cause, Galban, Lobo Co., S. A., is a Cuban concern.

With reference to the statement in the Ambassador's note that the *Ucayali* is under contract to transport materials for the United States Army, this Department has been informed by an official of the Water Transport Service, War Department, that the vessel now has on board a cargo to be carried to Panama for the War Department.

The Department will appreciate it if you will instruct the United States District Attorney in New Orleans to present to the court the attached certified copy of the

Ambassador's note and to say that this Department accepts as true the statements of the Ambassador concerning the steamship *Ucayali,* and recognizes and allows the claim of immunity.

Sincerely yours,

For the Secretary of State:
Sgd. SUMNER WELLES,
Under Secretary.

Enclosure:
137 From Peruvian
Ambassador.
April 15, 1942.

No. 2075
UNITED STATES OF AMERICA
DEPARTMENT OF STATE

To All to Whom These Presents Shall Come, GREETING:

I certify that the document hereunto annexed is a true copy from the files of this department.

138

In testimony whereof, I, Cordell Hull, Secretary of State, have hereunto caused the Seal of the Department of State to be affixed and my name subscribed by the Director of Personnel of the said Department, at the City of Washington, in the District of Columbia, this 28th day of April, 1942.

SEAL

Signed CORDELL HULL,
Secretary of State.

By EDWARD YARDLEY,
Director of Personnel.

PERUVIAN EMBASSY

WASHINGTON, D. C.

April 15, 1942.

Your Excellency:

I have the honour to request Your Excellency's good offices in order that in accordance with the procedure established by the decision of the Supreme Court of the United States in the cases of *Ex Parte Muir,* 254 U. S. 522; *The Navemar,* 102 F. (2d) 444; *Sullivan* v. *State of Sao Paulo,* 140
36 F. Supp. 503, affirmed 122 F. (2d) 355; *Katingo Hadjipatera,* 40 F. Supp. 546; *Maliakos,* 41 F. Supp. 697; *Ioannis P. Goulandris,* 40 F. Supp. 924; and *Margaret Tassia,* 41 F. Supp. 699, Your Excellency kindly make the proper indication to the Attorney General of the United States or other competent judicial authority to the end that the United States District Court for the Eastern District of Louisiana vacate the suit and the process to which is subjected the Peruvian steamship Ucayali.

The steamship Ucayali is owned by and is in the possession of the Peruvian Government but has been libeled in an action in rem in the United States District Court, 141
Eastern District of Louisiana, New Orleans Division in an action entitled "Galban, Lobo Co., S. A. versus Compañia Peruana de Vapores y Dique del Callao and the steamship Ucayali, her engines, boilers, etc." The Peruvian government does not desire the continuation of the action at present pending but that the libel be dismissed on the ground that the vessel is owned and operated by a friendly sovereign power in the service and interest of the people of the Republic of Peru.

The vessel is under engagement to transport materials for the United States Army and thereafter she will be, as heretofore, engaged in the transportation of merchan-

dise produced in the Republic of Peru to the United States or to other friendly countries.

The

His Excellency Sumner Welles,
Acting Secretary of State,
Washington, D. C.

The Peruvian Government accordingly prays that Your Excellency's Department will affirmatively make a suggestion to the Attorney General that the appropriate United States Attorney be instructed to file a suggestion of sov-
143 ereign inmunity in which the State Department will state that it recognized the contents of this appeal and desires the suit referred to to be dismissed.

Please accept, Your Excellency, the renewed assurances of my highest consideration.

M. de Freyre y Santander.

144

Notice of Motion. 145

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF LOUISIANA,

New Orleans Division.

GALBAN LOBO CO., S. A. versus COMPANIA PERUANA DE VAPORES Y DIQUE DEL CALLAO and The Steamship "UCAYALI," her engines, boilers, etc.	No. 562 In Admiralty 146

Sirs:

PLEASE TAKE NOTICE that upon the letter of His Excellency M. de Fredre y Santander, Ambassador of the Republic of Peru to the United States, to the Honorable Sumner Welles, Acting Secretary of State, dated April 15, 1942, the letter of the Honorable Sumner Welles to the Honorable Francis Biddle, Attorney General of the United States, dated May 5, 1942, and the letter of the Honorable Francis Biddle to the undersigned, United States Attorney for the Eastern District of Louisiana, copies of which have been submitted to the Court, a suggestion of immunity has been filed by the undersigned, United States Attorney for the Eastern District of Louisiana, and the undersigned will move this Court at a stated term for hearing of motions appointed to be held in the United States Court House, New Orleans, Louisiana, on the 1st day of July, 1942, at 10:30 o'clock in the forenoon of the day or as soon thereafter as counsel can be heard, for an order dismissing the 147

148 *Notice of Motion.*

suit of Galban, Lobo Co., S. A. versus Compania Peruana de Vapores y Dique del Callao and the Steamship UCAYALI, her engines, etc., for want of jurisdiction on the ground that with respect to the Peruvian Steamship UCAYALI a claim of sovereign immunity was recognized and allowed by the said State Department and that the said Steamship UCAYALI is not subject to the jurisdiction of this Honorable Court, and immune from suit therein, and for such other and further relief as the Court may deem just in the premises.

149 Dated, New Orleans, Louisiana, June 29, 1942.

Respectfully,

(Signed) HERBERT W. CHRISTENBERRY,
HERBERT W. CHRISTENBERRY,
United States Attorney.

To:
MESSRS. TERRIBERRY, YOUNG, RAULT & CARROLL,
Proctors for Libellant,
Whitney Building,
New Orleans, Louisiana.

150

Minute Entry, June 24, 1942. 151

Borah, j:

No. 562 (Admiralty)
GALBAN LOBO COMPANY, S. A.,
Versus
COMPANIA PERUANA de VAPORES Y DIANE DEL CALLAO
and Steamship "UCAYALE," etc.

By agreement and with consent of the Court,

IT IS ORDERED that the application of Republic of Peru for an order dismissing action in this cause, be continued to July 1st, 1942 at 10:00 o'clock A. M. 152

Minute Entry, July 1st, 1942.

Borah, j:

No. 562 (Admiralty)
GALBAN LOBO COMPANY, S. A.,
Versus
COMPANIA PERUANA de VAPORES Y DIANE DEL CALLAO
and Steamship "UCAYALI," etc.

153

On motion of L. V. Cooley, Jr., Assistant United States Attorney.

IT IS ORDERED that the application of the Republic of Peru for an order to dismiss this cause, be continued until WEDNESDAY, July 8th, 1942, at 10:00 o'clock A. M.

154 **Minute Entry, July 8, 1942.**

Borah, j:

No. 562 (Admiralty)
GALBAN LOBO COMPANY, S. A.,
Versus
COMPANIA PERUANA de VAPORES Y DIANE DEL CALLAO
and Steamship "UCAYALE," etc.

This cause came on this day to be heard on the application of Republic of Peru for an order dismissing action.

155 Present: Jose Rault (Terriberry, Young, Rault and Carroll) Attorneys for Plaintiff,
Nicholas Callan (Monroe & Lemann) Attorneys for Defendant and Republic of Peru,
L. V. Cooley, Jr., appearing on behalf of the United States,

After hearing arguments of Proctors for the respective parties, the matter was submitted, and the Court took time to consider.

156

Bond.

157

STATE OF LOUISIANA
PARISH OF ORLEANS

KNOW ALL MEN BY THESE PRESENTS That we, the Republic of Peru as Principal and National Surety Corporation as Surety, are held and firmly bound unto H. C. Richardson for the benefit of whom it may concern in the sum of Sixty Thousand ($60,000) Dollars lawful money of the United States of America, for the payment whereof to the United States Marshal, for the benefit of whom it may concern, his successor and successors, we jointly and sev-
158 erally bind ourselves, our successors, administrators and assigns firmly by these presents.

WITNESS our respective hands and seals hereunto affixed by us at the City of New Orleans, this 9th day of April, 1942.

WHEREAS an admiralty warrant lately issued out of the Honorable Court of the United States of America for the Eastern District of Louisiana, New Orleans division in the suit entitled Galban Lobo Co., S. A. versus Compania Persuana de Vapores y Dique Del Callao and The Steamship Ucayali, Her Engines, Boilers, Etc., commanding the Mar-
159 shal to attach by process of foreign attachment the SS UCAYALI which said vessel has been attached accordingly, but has been released from seizure and delivered to the Republic of Peru by reason of the signing, sealing and delivery of these presents, the said Republic of Peru having filed a claim to said vessel which is now of record in the Clerk's office of this court:

Now the condition of the above obligation is such that if said claimant and surety abide by all of the orders interlocutory or final of the Court and pay the libellants the amount awarded by final decree rendered in the Court to

160 which the process is returnable, or in any appellate court, then the foregoing obligation is to be voided, but otherwise it will remain in full force and effect. The filing of this bond is not a general appearance and is without prejudice to or waiver of all defenses and objections which may be available to respondent and claimant particularly but not exclusively sovereign immunity.

REPUBLIC OF PERU
BY *Monroe and Lemann*
NATIONAL SURETY CORPORATION
161 BY. *T. L. Angen*
Attorney-in-fact
SEAL

Witnesses:
T. Hebert
L. Crews

KNOW ALL MEN BY THESE PRESENTS, that NATIONAL SURETY CORPORATION, a Corporation duly organized and existing under the laws of the State of New York, and having its principal office in the City of New York, N. Y., both made, constituted and appointed, and does by these
162 presents make, constitute and appoint *Thomas L. Avegno,* of *New Orleans* and State of *Louisiana* its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver, *any and all bonds, recognizances, contracts of indemnity and other conditional or obligatory undertakings; provided, however, that the penal sum of any one such instrument executed hereunder shall not exceed ONE HUNDRED THOUSAND ($100,000.00) Dollars,* and to bind the Corporation thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the common seal of the corporation and duly attested by its Secretary, hereby ratifying and confirming

all that the said Attorney(s)-in-Fact may do in the premises. Said appointment is made under and by authority of the following provisions of the By-Laws of NATIONAL SURETY CORPORATION.

"ARTICLE XII. RESIDENT OFFICERS AND ATTORNEYS-IN-FACT.

"Section 1. The President, Executive Vice-President or any Vice-President may, from time to time, appoint Resident Vice-Presidents, Resident Assistant Secretaries and Attorneys-in-Fact to represent and act for and on behalf of the Corporation 164
and the President, Executive Vice-President or any Vice-President, the Board of Directors or the Executive Committee may at any time suspend or revoke the powers and authority given to any such Resident Vice-President, Resident Assistant Secretary or Attorney-in-Fact, and also remove any of them from office.

"Section 4. ATTORNEYS-IN-FACT. Attorneys-in-Fact may be given full power and authority for and in the same and on behalf of the Corporation, to execute, acknowledge and deliver, any and all bonds, recognized, contracts of indemnity and other condi- 165
tional or obligatory undertakings, and any and all notices and documents cancelling or terminating the Corporation's liability thereunder, and any such instrument so executed by any such Attorney-in-Fact shall be as binding upon the corporation as if signed by the President and sealed and attested by the Secretary.

"Section 7. ATTORNEYS-IN-FACT. Attorneys-in-Fact are hereby authorized to verify any affidavit required to be attached to bonds, recognizances, contracts of indemnity, or other conditional or obligatory undertakings, and they are also authorized and

166 *Bond.*

empowered to certify to copies of the By-Laws of the corporation or any Article or Section thereof.

In Witness Whereof, National Surety Corporation has caused these presents to be signed by its Vice-President, attested by its Assistant Secretary, and its corporate seal to be hereto affixed this *28th* day of *August,* A. D. 19*39*.

National Surety Corporation
By S. G. Drake
Vice-President

(Seal)

167

Attest: A. N. MacDougall
Assistant Secretary

168

Verification. 169

State of New York, }
County of New York, } ss.:

On this *28th* day of *August,* A. D. 19*39,* before me personally came *S. G. Drake* to me known, who, being by me duly sworn, did depose and say, that he resided in the City of New York, that he is Vice-President of NATIONAL SURETY CORPORATION, the Corporation described in and which executed the above instrument; that he knows the seal of said Corporation that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation and that he 170
signed his name thereto by like order. And said *S. G. Drake* further said that he is acquainted with *A. N. MacDougall* and knows him to be an Assistant Secretary of said Corporation; and that he executed the above instrument.

Wm. A. McDowan
Notary Public

State of New York, }
County of New York, } ss.:

I, *H. Hussenetter,* Resident Assistant Secretary of NATIONAL SURETY CORPORATION, do hereby certify that the 171
above and foregoing is a true and correct copy of a Power of Attorney; executed by said National Surety Corporation, which is still in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Corporation at the City of New York, N. Y., this *9* day *April,* A. D., 19*42.*

Sgd. H. Hussenetter
Resident Assistant Secretary

172 **Answer.**

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF LOUISIANA,

New Orleans Division.

GALBAN LOBO CO., S. A. versus COMPANIA PERUANA DE VAPORES Y DIQUE DEL CALLAO 173 and The Steamship "UCAYALI," her engines, boilers, etc.	No. 562 In Admiralty

To the Honorable the Judges of the United States District Court, Eastern District of Louisiana:

Now comes Galban Lobo Co., S. A., libelant, through its undersigned proctors, and for answer and return to the suggestion of immunity and motion to dismiss filed herein
174 by Honorable Herbert W. Christenberry, United States Attorney for the Eastern District of Louisiana, and to the motion to dismiss filed by the Republic of Peru, through its proctors, Messrs. Monroe & Lemann says:

1. Libelant puts movers on proof that this is a suit against the property of a friendly foreign nation.

2. Libelant denies that at the time of the events referred to in the libel and at the time of the seizure of the Steamship UCAYALI, and at the time of the claiming and bonding thereof the Steamship UCAYALI was in the possession of the Republic of Peru.

175

3. Libelant denies that the Steamship UCAYALI is not subject to the jurisdiction of the court or immune from process.

4. Libelant shows that if, at the time of the seizure, the Steamship UCAYALI was the property of and in the possession of a friendly foreign nation, to-wit, the Republic of Peru, that any immunity to which the vessel or the Republic of Peru may have been entitled to at that time has been waived by actions in this case by the Republic of Peru which constitute a general appearance:

176

(a) By filing as respondent and claimant a claim to said vessel dated April 9, 1942;

(b) By filing a surety release bond, dated New Orleans, April 9, 1942, in the sum of $60,000.00, whereon the Republic of Peru is principal, and National Surety Corporation is surety, agreeing to "abide by all of the orders interlocutory or final of the court and pay the libelant the amount awarded by final decree rendered in the court to which the process is returnable, or in any appellate court", which bond was amended by the Republic of Peru and the National Surety Corporation on April 13, 1942;

177

(c) By taking the testimony of Francisco Olsen, Master of the Steamship UCAYALI, on April 11, 1942, on the merits of the case, and offering in evidence through this witness Peru Exhibits 1 to 6 inclusive (being charter party on which this libel is based and bills of lading), all notwithstanding that libelant, through its proctor, dictated into the record at the beginning of said testimony the following notice and objection:

> "Mr. Rault: I wish to say on behalf of libelant that we shall take the position that the testimony of the captain of the UCAYALI and the appearance of

counsel is a general appearance and waiver of any plea of sovereign immunity, or any plea connected therewith."

Copy of the testimony of said Francisco Olsen, master of the Steamship UCAYALI, taken on the merits of this case, and photostatic copies of said Peru exhibits 1 to 6 inclusive, are annexed hereto and made part hereof.

(d) By filing an ex parte motion for and obtaining and filing an order of the court dated April 18, 1942, extending
179 "the time to answer or otherwise plead to the libel," for a period of 20 days from April 20, 1942, and by filing ex parte motions for and obtaining and filing orders from the court granting further similar extensions on May 8, 1942, and on May 29, 1942.

Attached hereto as part hereof is the affidavit of Jos. M. Rault in support of this answer and return, which libelant prays may be read as a part hereof.

And now having fully answered, libelant prays, the premises considered, that said motions and the plea of immunity be denied, and that the Republic of Peru, respondent and claimant herein, be required to answer the
180 libel herein.

GALBAN, LOBO CO., S. A.,
By MICHELSEN & CHAMBERLAIN,
and
TERRIBERRY, YOUNG, RAULT & CARROLL,
By: (Signed) JOS. M. RAULT,
Proctors.

Verification. 181

State of Louisiana
Paris of Orleans

BEFORE ME, the underisgned authority, personally came and appeared Jos. M. RAULT, who after being first duly sworn did depose and say:

That he is a member of the firm of Terriberry, Young, Rault & Carroll, proctors for libelant; that libelant is a Cuban corporation and has no officer within this district; that he has read the foregoing answer and return, and the matters set forth therein are true and correct to the best of his knowledge, information and belief. 182

(Signed) JOS. M. RAULT.

Sworn to and subscribed before
me this 7th day of July, 1942.

(Signed) W. W. YOUNG,
Notary Public.

183

184 **Affidavit of Jos. M. Rault, Annexed to and Forming Part of the Answer and Return of Libelant to the Motion and Suggestion of Immunity Filed by the United States of America and to the Motion of the Republic of Peru.**

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF LOUISIANA,

New Orleans Division.

185 GALBAN LOBO CO., S. A. versus COMPANIA PERUANA DE VAPORES Y DIQUE DEL CALLAO and The Steamship "UCAYALI," her engines, boilers, etc.	No. 562 In Admiralty

State of Louisiana
Parish of Orleans

186

BEFORE ME, the undersigned authority, personally came and appeared Jos. M. RAULT, who after being duly sworn did depose and say:

(1) I am a member of the firm of Terriberry, Young, Rault & Carroll, New Orleans, proctors for libelant in this case, and have been actively in charge of libelant's interests in this case from the inception of this litigation.

(2) On March 30, 1942, I filed on behalf of libelant a libel in rem in this court against the Steamship UCAYALI seeking to recover losses and damages in the estimated

amount of $100,000.00, growing out of a breach of a contract of carriage between the libelant's agent at Callao, Peru, and Compania Peruana de Vapores y Dique del Callao, alleged on information and belief to be the owner of the Steamship UCAYALI. Admiralty process in rem was issued on that day by the Clerk of the United States District Court, the warrant of arrest being received by the Marshal on the same day. The UCAYALI was seized by the United States Marshal on March 31, 1942, and from that time until released on bond remained under seizure in the custody of the Marshal. 188

In order to make it unnecessary for the proctors representing the vessel to obtain an order of court fixing the amount of the bond, I, in accordance with the usual practice, on April 1, 1942, addressed a letter to the United States Marshal, captioned with the title of this case, and reading as follows:

> "This is to advise you that the libelant is agreeable to having the SS UCAYALI released from seizure upon the posting of a surety release bond in the sum of $60,000.00."

The original of this letter was delivered to the office 189
of Messrs. Monroe & Lemann, proctors for the UCAYALI.

(3) On April 9, 1942, a sworn claim for the UCAYALI was filed by the Republic of Peru, in which it alleged itself to be the owner of the UCAYALI and stated that it "prays to defend accordingly." This claim further stated "the filing of this claim is not a general appearance and is without prejudice to or waiver of all defenses and objections which may be available to respondent and claimant particularly but not exclusively sovereign immunity."

On the same day a surety release bond, dated April 9th, in the Amount of $60,000.00, whereon the Republic of Peru was principal, and the National Surety Company was

surety, was filed for the release of the UCAYALI. This bond though containing a reservation identical with that contained in the claim was otherwise in the usual form, the condition of the bond being

> "that if said claimant and surety abide by all the orders interlocutory or final of the court and pay the libelant the amount awarded by final decree rendered in the court to which the process is returnable, or in any appellate court, then the foregoing obligation is to be voided, but otherwise it will
> 191 remain in full force and effect."

We noted that through inadvertence this bond contained a recital that the admiralty warrant had been issued by way of foreign attachment. We called this to the attention of proctors for the Republic of Peru and they thereupon, on April 13, 1942, filed an amendment to the bond substituting the words "by process in rem" for the words "by process of foreign attachment."

(4) We were advised by proctors for the Republic of Peru that they desired to take the testimony of the master
192 of the UCAYALI. We attended at their office on April 11, 1942, at which time the testimony of Francisco Olsen, master of the UCAYALI, was taken on the merits of the case.

Before the testimony began, Mr. Nicholas Callan, of the firm of Monroe & Lemann, proctors for the Republic of Peru, stated as follows;

> "Mr. Callan: The testimony of Francisco Olsen, the master of the Peruvian Steamship Ucayali, is taken with full reservation and without waiver of all defenses and objections which may be available to respondent and claimant, particularly but not exclusively sovereign immunity; and the appearance of counsel for the Government of Peru and the

Steamship Ucayali is for the special purpose only of taking the testimony of the master under the reservation aforesaid."

I, as proctor for libelant, then stated as follows:

"Mr. Rault: I agree to the taking of the testimony of the master by consent at the offices of Messrs. Monroe & Lemann on Saturday, April 11, 1942, and agree to waiving, signing, sealing, certification and filing and all the other formalities provided by the de bene esse statute. I, however, do not agree to any reservation or attempted reservation as to the plea of sovereign immunity or any other plea that may in fact be waived by the taking of the testimony of the master." 194

Francisco Olsen, having been duly sworn, began his testimony on direct examination as follows:

"DIRECT EXAMINATION

Mr. Callan:

Q. Captain, you are the master of the Steamship Ucayali?

A. Yes, sir." 195

I then, on behalf of libelant, made the following statement:

"Mr. Rault: I wish to say, on behalf of libelants, that we shall take the position that the testimony of the Captain of the Ucayali and the appearance of counsel is a general appearance and waiver of any plea of sovereign immunity, or any plea connected therewith."

Mr. Callan then proceeded with the direct examination of the master, in which there were brought out many facts dealing with the merits of the litigation. During the course

of the testimony the Republic of Peru, through Mr. Callan, put in evidence six exhibits marked respectively Peru Exhibits 1 to 6 inclusive, being as follows:

1. Peru Exhibit 1, charter party covering the UCAYALI between La Compania Peruana de Vapores y Dique del Callao and Mr. Enrique Pardo of Lima (alleged by libelant to be its agent);

2. Peru Exhibits 2, 3, 4, 5 and 6, bills of lading issued by the Compania Peruana de Vapores y Dique
197 del Callao covering cargo loaded by the UCAYALI at various ports.

None of these documents contain any reference to the alleged ownership and possession of the Republic of Peru. Indeed, Clause 6 of the charter party reads, in part, as follows:

"6. For the faithful fulfillment of all the stipulations in the present contract, the contracting parties mutually commit and bind themselves; THE CHARTERERS with their worldly goods, present and
198 future, especially the cargo; and La Compania with its freight and *its Steamer.*" (Emphasis mine.)

The master, though claiming that the Republic of Peru owned the vessel, testified that Compania Peruana de Vapores y Dique del Callao acted in all respects as owner of the vessel (testimony p. 29); that it signed the ship's copy of the charter party that had been placed in evidence; that its name appears on all the bills of lading put in evidence; that the freight money under the charter party was paid to it (testimony p. 29); that it paid the master, officers, and crew of the UCAYALI, furnished her with all supplies, including bunkers, and gave all the orders in connection with

the vessel at Peru, including all orders at loading and bunkering ports (testimony pp. 27-28).

5. The return day on which answer or other pleading was due by the claimant and respondents in accordance with the rules of court was April 20, 1942.

On April 18th "the Republic of Peru, respondent and claimant, through its Proctors, Monroe & Lemann," on ex parte motion obtained the following order from the court:

"On motion of Republic of Peru, respondent and 200
claimant, through its proctors, Monroe & Lemann, who appear herein for the special and limited purpose of presenting this motion and with full reservation and without waiver of any defenses and objection which may be available to mover, particularly but not exclusively, sovereign immunity, and on suggesting to the Court that the return day to answer or otherwise plead to the libel herein expires on April 20th, and on further suggesting to the Court that mover requires an extension of at least twenty (20) days to present fully and adequately its pleas and defenses to said libel, particularly, but not ex- 201
clusively, the defense of sovereign immunity;

It is Ordered that the time to answer or otherwise plead to the libel filed herein be and the same is hereby extended for a period of twenty (20) days from April 20th, 1942.

New Orleans, La. April 18, 1942.

(Signed) A. J. Caillouet
Judge"

It will be noted that the motion requested the Court for an extension of 20 days:

202 *Affidavit of Jos. M. Rault.*

> "to present fully and adequately its pleas and defenses to said libel, particularly, *but not exclusively,* the defense of sovereign immunity"; (emphasis mine)

and that the order as prayed for by the Republic of Peru gave the requested extension of 20 days:

> "*to answer or otherwise plead* to the libel filed herein" (emphasis mine).

203 On May 8th and May 29, 1942, further ex parte motions were filed by "Republic of Peru, respondent and claimant, through its proctors, Monroe & Lemann," and further orders of court in similar terms obtained granting additional extensions.

6. I submit that under the established jurisprudence the foregoing actions of the Republic of Peru constitute a general appearance and that the attempted reservations made by it in taking such actions are unavailing; that the plea of sovereign immunity if it was ever well founded has been voluntarily waived by the actions of the Republic of Peru in filing claim for the vessel, in effecting its release
204 by bonding it, in taking the testimony of the master of the UCAYALI on the merits of the case, and in invoking the power of the court to grant an extension of time in which to answer or otherwise plead. I submit that the suggestion of immunity and the motions filed in connection therewith should be overruled and that the Republic of Peru, respondent and claimant, should be required to answer the allegations of the libel.

(Signed) JOS. M. RAULT.

Sworn to and subscribed before me
this 7th day of July, 1942.

(Signed) W. W. YOUNG,
Notary Public.

Testimony.

205

IN THE UNITED STATES DISTRICT COURT,

FOR THE EASTERN DISTRICT OF LOUISIANA,

New Orleans Division.

GALBAN LOBO CO., S. A. vs. COMPANIA PERUANA DE VAPORES Y DIQUE DEL CALLO, and the Steamship "UCAYALI," her engines, boilers, etc.	No. 562 In Admiralty

206

Testimony of Francisco Olsen, witness on behalf of Respondents in the above entitled cause, taken pursuant to stipulation of counsel before Ferdinand E. Zimmer, a Notary Public in and for the Parish of Orleans, State of Louisiana, at the offices of Messrs. Monroe & Lemann, 1424 Whitney Building, New Orleans, on Saturday, April 11, 1942.

APPEARANCES:

Messrs. MICHELSEN & CHAMBERLAIN AND TERRIBERRY, YOUNG, RAULT & CARROLL (Mr. Rault), Proctors for Libelant. 207

Messrs. MONROE & LEMANN (Mr. Nicholas Callan), Proctors for Respondents.

Mr. Callan: The testimony of Francisco Olsen, the master of the Steamship Ucayali, is taken with full reservation and without waiver of all defenses and objections which may be available to respondent and claimant, particularly but not exclusively sovereign immunity; and the appearance of counsel for the Government of Peru and the Steamship Ucayali is for the special purpose only of taking the testimony of the master under the reservation aforesaid.

Mr. Rault: I agree to the taking of the testimony of the master by consent at the offices of Messrs. Monroe & Lemann on Saturday, April 11, 1942, and agree to waiving, signing, sealing, certification and filing and all the other formalities provided by the de bene esse statute. I, however, do not agree to any reservation or attempted reservation as to the plea of sovereign immunity or any other plea that may in fact be waived by the taking of the testimony of the master.

STIPULATION.

209 Subject to the reservation and the exception to the reservation, it is stipulated that the testimony might be used in court in the above case.

It is further stipulated and agreed that the deposition of the Captain may be used in the present case or any future suit commenced by Galban Lobo Co. based upon or growing out of the failure of the Steamship Ucayali to proceed to New York on the voyage which is the subject of the present controversy, or any suit growing out of the condition of the cargo on that voyage.

It is further stipulated that all objections are reserved for the trial, except as to the form of the questions.

210 FRANCISCO OLSEN, being first duly sworn as a witness by Ferdinand E. Zimmer, Notary Public, testified as follows:

DIRECT EXAMINATION.

Mr. Callan:

Q. Captain, you are the master of the Steamship Ucayali? A. Yes, sir.

Mr. Rault: I wish to say, on behalf of libelants, that we shall take the position that the testimony of the Captain of the Ucayali and the appearance of counsel is a general appearance and waiver of any plea of sovereign immunity, or any plea connected therewith.

211

Mr. Callan:

Q. Captain, how long have you been master of the Ucayali? A. This is the second time that I have been master of the Ucayali, since the 28th of November last year.

Q. By whom were you employed as master of the Ucayali? A. The Peruvian Steamship Company.

Q. What is the name of the Peruvian Steamship Company? A. Compania Peruana De Vapores y Dique Del Callo.

Q. What was the relationship of that company to the Steamship Ucayali? A. They are the charterers of the ship—not the charterer, but they are running the ship. 212

Q. Do they own the ship? A. No, no; the ship belongs to the Peruvian Government.

Mr. Rault: I object. The question of ownership is a technical question and cannot be proved through the testimony of the master.

Mr. Callan:

Q. When did the vessel arrive in the City of New Orleans, Captain? A. The 23rd of March, 1942. 213

Q. When and from what point did the voyage, which ended in New Orleans on March 23, 1942, begin? A. When we left the last port.

Q. When did the voyage begin? A. The voyage began in Callao.

Q. On what date? A. The 28th of February, 1942.

Q. To what point did you proceed from Callao? A. To Samanco.

Q. What did you do at Samanco? A. We started loading sugar there.

Q. Do you know the name of the shipper of the sugar at that point? A. Well, at that point, it was Sociedad Agricola Hepena.

Q. To what port did you proceed from Samanco? A. From Samanco we proceeded to Eten.

Q. When did you arrive at that port? A. The 5th of March, I believe. (Witness refers to log book.) I can't have all the dates in my mind. We arrived at Eten the 4th of March.

Q. And what did you do at Eten? A. Load sugar, too.

Q. Who was the shipper of the sugar at Eten? A. Enrique Pardo.

Q. To what port did you proceed from Eten? A. To
215 Pimentel.

Q. When did you arrive at Pimentel? A. We arrived at Pimentel on the 5th of March.

Q. What did you do at that port? A. At Pimentel, load sugar, too.

Q. Who was the shipper of the sugar at Pimentel? A. Viuda de Piedra e hijos. All this shipment was supposed to go by Mr. Pardo from Samanco to Pimentel.

Q. Who was Mr. Pardo? A. He was the charterer of the ship; he is one of the parties of the charter.

Q. He was a party to the charter party? A. Yes, sir.

Q. When you left Pimentel, to what port did you proceed? A. Palara.

216 Q. When did you arrive at Palara? A. On the 7th of March.

Q. What did you do at that port? A. Bunkers, only bunkers.

Q. When did you leave that port? A. The same day, the 7th.

Q. To what port did you proceed after leaving Palara? A. We proceeded to Balboa.

Q. When did you arrive at Balboa? A. The 11th of March in the afternoon.

Q. When you arrived at Balboa, what did you do? A. Well, we was going to wait at Balboa. Hearing the news from the radio every day, we heard that many neutral ships

were being sunk in the North Atlantic, so we had a meeting on board and we decided to not go to New York on account of the risk.

Q. Now, you say that you heard that many ships had been sunk? A. Yes, there was a Chilean ship, the Tolten, that was sunk in the North Atlantic, and there was a Uruguayan ship and four Brazilian ships sunk.

Q. What was the source of this news, Captain? A. By the radio from New York.

Q. And with reference to your arrival at Balboa, could you fix the time that you heard this information or received 218
this information by radio? A. No, because we got the news at different times of the day or night.

Q. It was between the port of Palara and Balboa? A. Yes, sir.

Q. Now, when you refer to the sinking of neutral vessels, you are referring to what method of sinking? A. How is that, sir?

Q. What method of sinking were you referring to? A. Sinking.

Q. What method of sinking? Storms? A. No, no; submarines.

Q. Did you receive any additional information at Bal-
boa with reference to the sinkings in the North Atlantic? 219
A. Well, the only thing we got there was from the newspapers that we got at Panama, that we got on board from the pilot and from the quarantine officers. They always used to bring papers on board.

Q. When was the meeting held that you have referred to, between yourself and your crew? Can you fix the date that that meeting was held? A. On the 12th, on the next day after we arrived there.

Q. That was the day after you arrived at Balboa? A. Yes; we arrived too late that day and the ship wasn't received by the authorities. We got there at seven o'clock at night, and on the next day we had the meeting.

Q. Approximately what time did you have the meeting? A. About noon.

Q. What else did you do after you held this meeting—or what did you do after you held this meeting? A. After we held the meeting?

Q. Yes. A. Well, I sent a cable to Callao, to the Government.

Q. By whom was the cable sent? Who actually sent the cable? A. Our agents.

Q. Who were your agents there? A. Panama Railroad
221 Company.

Q. Who else did you see at Balboa? A. At Balboa we see the Peruvian Consul.

Q. What did you see the Peruvian Consul for? A. Because we tell him we are agreed not to go to New York, I mean the officers and the crew, because we don't consider it safe to go on account of the sinkings.

Q. What was the cable that you sent to your owners? Can you tell us what your instructions were in that cable?

Mr. Rault: I object and ask for the production of the cable, or a copy of it.

222 Mr. Callan:

Q. You said that you asked your agents to send a cable to the Peruvian Government; is that right? A. Yes, sir.

Q. Have you a copy of that cable? A. No, I just tell my agent—the employee of the agent.

Q. What did you tell the employee of your agent? A. To let the Government know that the crew and the officers had agreed not to go to New York on account of the sinking of ships by subarines in the North Atlantic, and then he told me that the best thing is to see the Peruvian Consul, so I think the Peruvian Consul sent a cable.

Q. Was a reply received to that cable? A. By the Consul, yes, sir.

223

Q. Were you instructed with reference to the reply to that cable? A. Yes, they told me to proceed to New Orleans instead of to New York.

Q. You say "they" told you to proceed to New Orleans instead of New York. Who do you mean by "they?" A. The Peruvian Government.

Mr. Rault: I object and call for the production of the cable.

Mr. Callan:

224

Q. Who advised you that the Peruvian Government so instructed you? A. The Peruvian Consul and the agents, too.

Q. Did they give you any detailed instructions as to the manner and method in which you would proceed? A. The Peruvian Consul told me that I must go to the Fifteenth Naval District at Cristobal and get instructions there to have a safe route to New Orleans, and I went there and I got instructions from the commander-in-chief there, in the Fifteenth Naval District.

Mr. Rault:

225

Q. You mean directions? A. Yes, a sailing route.

Q. Sailing directions? A. Sailing directions, yes.

Mr. Callan:

Q. Now, after you got those directions, what did you do? A. We passed through the Canal the same day, the 15th, in the morning, and arrived at Cristobal the same day in the afternoon, and sailed from Cristobal on the 16th in the morning.

Q. What date did you leave Balboa? A. The 15th.

Q. When did you arrive at Cristobal? A. The same day in the afternoon.

Q. And when did you leave Cristobal? A. The next day, the 16th, in the morning.

Q. You referred to a charter party signed by Pardo? A. Yes, sir.

Q. Did you retain a copy of that charter party on the vessel? A. Yes, sir.

Q. Have you got that copy? A. I got the ship's copy (handing document to counsel).

227 Q. You have handed me a document in Spanish, purporting to bear the signature of Enrique Pardo. Is that his signature? A. That is his signature, yes, sir.

Q. That is the ship's copy of the charter party? A. Yes, sir.

Mr. Callan: We offer in evidence the charter party referred to by the master, marking the same Peru-1.

Mr. Rault: It is stipulated that a photostatic copy may be substituted for the original exhibit.

Mr. Callan:

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Q. Now, Captain, how were the bills of lading that were issued on the sugar shipped at the various Peruvian ports made up, with reference to the numbers of bills of lading which were issued? A. They used to make ten copies.

Q. What was done with the ten copies? A. We used to sign three original bills, and we kept on the ship two, and the rest were given to the shippers. We don't know what they do with the rest.

Q. Now, what did you do with the copies that you kept on the ship? A. I have one set here and I give one set to the agent.

Q. There is exhibited to you five bills of lading which are marked for identification Peru-2, Peru-3, Peru-4, Peru-

5, Peru-6, and I ask you if these were bills of lading which you kept on board the vessel covering the shipment of the cargo which is in controversy here? A. Yes, sir.

Q. It is noted that all bills of lading bear the initials "H. V." Please state whose initials those are. A. The purser of the ship, H. Voysest.

Q. It is also noted that on the bills of lading, following the designation "Shippers," there is a name. What name is that? A. This name is the employee of the agents there.

Q. What agency are you referring to? A. Sociedad Agricola Hepena in that port, Samanco, and Pardo in Eten, 230
and Viuda de Piedra e hijos in Pimentel.

Q. Those were the names of the shippers; is that right, Captain? A. Yes, sir.

Q. And the signature is the signature of the employees of the ship? A. Yes, sir, of the employees.

Mr. Callan: In connection with the witness' testimony, there is offered and introduced in evidence the bills of lading referred to and identified by him.

Cross Examination by Mr. Rault:

Q. Captain, when did you join this ship? A. The 28th, 231
of November, 1941, for the second time.

Q. And from the 28th of November down to the present time, you have been continuously master of the Peruvian steamship Ucayali? A. Yes, sir.

Q. I show you Exhibit Peru-1, which is the ship's copy of the charter party and is written in Spanish. What is the date of that charter party? A. The 18th of November, 1941.

Q. That charter party was then signed before you became master of the ship? A. Yes, sir.

Q. Do you know Mr. Enrique Pardo? A. Yes, sir, I know him personally.

Q. He lives where? A. In Lima, Peru.

Q. Do you know that he is the agent of Galbán Lobo Company? A. No, I don't know his relations.

Q. Do you know that he represents them there in Lima? A. Mr. Pardo?

Q. Yes. A. I only know him, sir.

Q. Have you any knowledge of the fact that he signed this charter party on behalf of Galban Lobo Company? A. No.

Q. You don't know anything about that? A. No, sir.

Q. You didn't see it signed? A. No, sir.

233 Q. Your only knowledge is that the ship's representatives gave you this copy? A. Yes, sir.

Q. And said to you that this was your charter party? A. Yes, sir.

Q. And that's all you know about it? A. That's all, and that I must load my cargo in those ports (pointing to charter party).

Q. You refer to the names of some ports written in pen and ink at the top of the charter party? A. Yes, sir.

Q. At Callao, did you load any sugar? A. No, sir.

Q. What did you load? A. Flax.

Q. Not under that charter party? A. No.

Q. Where was that flax bound for? A. New York, too.

234 Q. What was the first port at which you loaded sugar? A. Samanco.

Q. I show you the two bills of lading in Spanish, Peru-5 and Peru-4; are those your ship's copies of the bills of lading covering sugar loaded at Samanco? A. Yes, sir.

Q. There is no notation of short shipment on bill of lading Peru-5, is there? A. No.

Q. And on bill of lading Peru-4, there is a notation of short shipment of 157 sacks of sugar? A. Yes, sir.

Q. Your next port for loading was Eten? A. Yes, sir.

Q. And you have produced ship's copy of two bills of lading for that port, Peru-3 and Peru-2? A. Yes, sir.

235

Q. And your last port for loading sugar was Pimentel, wasn't it? A. Yes, sir.

Q. And you have produced the ship's copy of bill of lading marked Peru-6, which covers the Peru loading. Now, that shows eight bags short shipped and four bags lost over-board? A. Yes, sir.

Q. And in the cases of those short shipments, in order to know the amounts loaded at that port, you have to deduct that from the total amount shown in the bills of lading? A. Yes, sir.

Q. And I think you said that you understood that Mr. Pardo was loading this sugar at all of those ports? A. Yes, sir. 236

Q. Now, have you your log book here? A. Yes, sir.

Q. Is it written in English or Spanish? A. Spanish.

Q. Please turn to the entry showing the departure from Pimentel. A. Here it is, 6th of March.

Q. Please tell us the date and hour that you completed loading. A. At 4:00 o'clock P. M. on the 6th of March.

Q. And the date and hour that you sailed from Pimentel? A. 4:45 P. M. the same day, March 6th.

Q. Your next port was then going to be Talara? A. Yes, for bunkers.

Q. When did you arrive at Talara, and when did you sail? A. On the 7th. 237

Q. At what hour? A. 1:20 P. M. on March 7th, arrived.

Q. And sailed when? A. 5:25 P. M. on March 7th.

Q. Then you had finished all loading and bunkering, and, when you left Talara, you were bound for New York via the Panama Canal? A. Yes, sir.

Q. That's correct? A. Yes, sir.

Q. Now, tell me the date and hour that you arrived at Balboa? A. We arrived on the 11th of March at 7:08 P. M.

Q. What did you do? Anchor? A. Anchored outside.

Q. When did the American officers or port authorities come aboard? A. On the 12th at 9:20 A. M.

238 *Testimony.*

Q. While you were still at anchor? A. Yes, sir.

Q. When was this meeting that you refer to held? A. On the 12th about noon.

Q. Please read to me all of the entries in your log book, beginning at 6:20 P. M. on March 11th. A. "March 11, 18:29, log taken on board, showing in the log 788.5 miles. 18:31, orders to stand by the engines. 18:33, full speed astern. 18:35, full speed ahead. 18:55, stopped. 19:00, full speed astern. 19:01, slow ahead. 19:05, full speed astern. 19:08, anchored at nine fathoms with 45 fathoms of chain. 19:11, finished with engines."

239 Q. Then, you had anchored and finished with the engines at eleven minutes after seven o'clock on the night of March 11th? A. Yes, anchored in the Bay of Balboa.

Q. Your log as translated by you shows that the authorities came on board at 9:20 A. M.? A. Yes, sir.

Q. And the line with 12 noon is the record indicating that the customs and port authorities formalities had been completed? A. Yes, sir.

Q. The next entry is at 1:00 o'clock, indicating that you are waiting to go alongside the pier at Balboa? A. At Balboa, yes.

Q. There is a similar entry between 4:00 and 8:00 P. M.

240 on March 12th? A. Yes, sir.

Q. And the only entry between 8:00 to 12:00 P. M. on March 12th is that you anchored in the Bay? A. Yes, sir.

Q. And on March 13th, between midnight and 4:00 o'clock, you have the entry "Anchored in the Bay?" A. Yes, sir.

Q. At 12:42 P. M. on March 13th, you have an entry that the pilot came on board, and you began heaving up anchor? A. Yes, sir.

Q. And then at 2:35 P. M. you have the entry "alongside the pier at Balboa?" A. Yes, sir.

Q. Captain, I see no entry in there about this meeting that you held on board. A. Well, we didn't put it, because,

we received orders from the Government afterwards, so I didn't put anything in the log book.

Q. Who attended that meeting on board ship? A. I attended the meeting.

Q. Who else? A. The chief officer, the second officer, the chief engineer and the purser.

Q. That meeting was held on what day? A. On the 12th.

Q. About noon? A. About noon, yes.

Q. That was while you were at anchor? A. Outside in the Bay.

Q Had you gotten any newspapers by that time? A. 242
Yes, sir.

Q. From whom? A. From the port authorities, the doctor there from the custom-house.

Q. And it was then that you, the chief officer, the second officer, the chief engineer and the purser decided that you would not go to New York because it was too dangerous on account of the radio news and the newspaper news that you had received with respect to the torpedoing and sinking of neutral vessels; is that correct? A. Yes, sir.

Q. You sent no wireless to your owner? A. No, sir.

Q. You simply decided not to go? A. Not to go.

Q. Did you decide what you were going to do, since you 243
were not going to New York? A. No, sir.

Q. But you had definitely made up your minds that under no circumstances were [illegible] going to go up the North Atlantic Coast? A. Yes, sir.

Q. And then you went ashore at Balboa? A. At Balboa, yes.

Q. And you say you saw your ship's Agent? A. And the Peruvian Consul.

Q. But first the ship's agent? A. They met me on the ship, outside in the Bay.

Q. Were they present at this conference? A. No, sir.

Q. You told them, when you met them, of the decision that you and your officers had reached? A. About not going to New York.

Q. You told them you were not going? A. Yes, sir.

Q. And that was definite? A. Yes, sir.

Q. And they said what? That they would tell Peru of your decision? A. Of my decision, yes.

Q. And you say you did not see the cable that was sent by your ship's agent at Balboa? A. No, sir.

Q. Do you know who they sent it to? A. I think the Consul, the Peruvian Consul.

Q. Who was your ship's agent at Balboa? A. Panama Railroad Company.

245 Q. The Compania Peruana De Vapores y Dique Del Callo, is that the Company for whom the Panama Railroad Company was acting? A. Yes, sir.

Q. Is that the Company to which the Panama Railroad Company sent the cable? A. Yes, sir.

Q. Did you ever see that cable? A. No, sir.

Q. Then, the Peruvian Consul at Balboa told you that he had cabled to his government in Peru of your decision? A. Of our decision, yes, sir.

Q. And you did not see that cable either? A. No, sir.

Q. On what date was it that you got word to go to New Orleans? A. The 14th, in the night.

Q. The 14th of March? A. Yes, sir.

246 Q. Had you had any advices from your ship's agent at Balboa, or from the Consul in the meantime? A. No, sir.

Q. You were just waiting to hear— A. Waiting.

Q. As I understand, Captain, you were just waiting to hear what your ship's representatives and the Peruvian Government had to say when they learned of your decision that you would not go to New York? A. Yes, sir.

Q. Is there an entry in the log book with respect to the answer that your ship's agent or the Peruvian Consul gave you? A. No, sir.

Q. Did they give you any written orders to go to New Orleans? A. No, they told me by word only that I must go to New Orleans.

Q. Who told you that? The Panama Railroad Company representatives? A. First the Consul.

Q. What was his name? A. Pinedo.

Q. He is the Peruvian Consul at Balboa? A. In the Canal Zone.

Q. And he gave you verbal instructions to go to New Orleans? A. To New Orleans, and to take instructions from the Fifteenth Naval District.

Q. And to take sailing directions from the American Naval District authorities at the Canal Zone? A. Yes, sir.

Q. And then your ship's agent simply said that he had similar word? A. Similar word. 248

Q. From the ship's representatives in Peru? A. Yes, sir.

Q. And he gave you nothing in writing? A. No, sir.

Q. What was the name of the representative of the Panama Railroad Company with whom you dealt? A. I can't remember his name.

Q. He was an American? A. Yes, he was American.

Q. Did he speak Spanish? A. No. Every time I would find new employees, and I can't remember the names.

Q. Then you passed through the Panama Canal? A. Yes, in the morning of the 15th.

Q. And where did you get on the night of the 15th? 249 Cristobal? A. Cristobal.

Q. Did you anchor there? A. Yes, sir.

Q. That is on the Atlantic side of the Panama Canal? A. Yes, sir.

Q. Then you left your anchorage at Cristobal on the 16th at what time? A. 8:18 A. M.

Q. When did you get clear for sea? A. At 9:25 A. M.

Q. On March 16, 1942, you took your departure from Cristobal bound for New Orleans? A. Yes, sir.

Q. Do I understand Captain, that at no time from March 12th at noon, when you and your officers made the decision that you would not go to New York, until the

time you arrived at New Orleans, did you receive any written instructions or telegraphic or cable or wireless instructions from your ship's representatives about going to New Orleans; is that right? A. Yes, that's right.

Q. The only thing that you got were these verbal messages that you have referred to, from the Peruvian Consul at the Canal Zone and from the Panama Railroad Company, your agents in the Canal Zone? A. Yes, sir.

Q. Which they said were the replies of the ship's representatives in Peru to your statement that you would not go to New York? A. To New York, yes.

251 Q. That's right, is it? A. Yes, sir.

Q. This Compania Peruana De Vapores y Dique del Callo, they were the ones who paid you? A. Yes, sir.

Q. And paid your crew? A. Yes, sir.

Q. Furnished you with supplies? A. Yes, sir.

Q. Furnished you with bunkers? A. Yes, sir.

Q. Gave you your orders at Peru? A. Yes, sir.

Q. And at the various loading ports and at the bunkering port in Peru? A. Yes, sir.

Q. In short, the Compania Peruana De Vapores y Dique Del Callo acted in all respects as your owner? A. Yes.

Q. And as owner of the vessel? A. No, the owner of
252 the vessel was the Peruvian Government.

Q. I say, they acted in all respects as the owner of the vessel; is that right? A. Yes, sir.

Q. They are the signators to the ship's copy of the charter party that you have presented? A. Yes, sir.

Q. And their name appears on all of the bills of lading, ship's copies of which you have produced here? A. Yes, sir.

Q. And they made, according to the charter party, the contract of charter for the ship? A. Yes, sir.

Q. None of the freight money was paid to you, was it? A. No, sir.

Q. Do you know that that freight money was paid—

that is, the part that was paid in Peru,—was paid to the Compania Peruana De Vapores y Dique Del Callo? A. Yes.

Q. You know that? A. Yes, sir.

Q. By Pardo? A. Yes, sir, by Enrique Pardo.

Q. The sailing directions that you have referred to as being received from the United States Naval authorities in the Canal Zone were merely telling you how to get from the Canal Zone to New Orleans? A. Yes.

Q. On account of war conditions? A. Yes, sir.

Q. About mines and what not of that sort? A. Yes. 254

Q. Were you master of this ship prior to November 28, 1941, at any time when it was operated under a charter between the Compania Peruana De Vapores y Dique Del Callo and Enrique Pardo? A. I was captain of the ship in July, 1940, when the ship was chartered by Mr. Echecopa. He chartered the ship, and he was working with Mr. Enrique Pardo.

Q. Your understanding was that Mr. Pardo was interested in the charter of the ship at that time? A. Yes, sir.

Q. That trip was from where to where? A. From Callao to New York.

Q. With sugar? A. Yes, sir.

Q. Did you know or did you hear that Galban Lobo 255
Company were the principals for whom Mr. Pardo and Mr. Echecopa were acting? A. No, sir.

Q. Your statement is that, so far as you personally were concerned, you don't know anything about Galban Lobo Company in this transaction? A. No, sir.

Q. Then, Captain, in due course you arrived at New Orleans on March 23rd, and have here discharged all of the sugar that was on board, which had been originally consigned to New York? A. Yes, sir.

Q. Captain, were some of these bags of sugar damaged? A. If I know that?

Q. Were they damaged when you arrived here? A. Yes, sir.

Q. What was the cause of the damage? A. The cause of the damage was on account of two days of heavy strong wind we had in the Gulf, where the ship was taking too much water on the forward deck.

Q. What happened? A. I think one or two rivets became loose, and it was leaking the water through there.

Q. Where were the rivets? A. On the main deck.

Q. What date was that?

(Witness refers to log book.)

A. The 21st of March.

257 Q. Into what hold did this sea water get? A. No. 2 hold.

Q. How many bags were damaged? A. Approximately about sixteen or eighteen bags.

Q. Of refined sugar? A. Yes, sir, refined sugar.

Mr. Rault: I serve notice we shall amend our libel and add to it claim for cargo damage.

Q. What was the weather on March 21st? A. Well, it was a strong wind, Force 7.

Q. Read the log entry to me about the weather on that day. A. "Strong wind, heavy sea on account of the wind,
258 the ship taking water in the fore part." That was since 18:00 that day.

Q. On March 21st? A. Yes, sir.

Q. To when? A. Until 13:00 of the 22nd.

Q. And the wind forces, beginning on 17:00 of the 21st, as shown in your log book, read as follows:

"March 21, 17:00, force 4, northwest.
18:00, force 7, northwest.
19:00, force 7, northwest.
20:00, force 7, north.
21:00, force 7, north.
22:00, force 7, north.
23:00, force 7, north.
24:00 (or midnight), force 7, north.

March 22, Force 7, north, continuously from
1:00 A. M. until 7 A. M.
8:00 A. M. force 6 north.
Then force 6 until 13:00.
Then force 5, force 4 and force 3,
down to 16:00?

A. Yes, sir.

Q. Always from the north? A. Yes, sir.

Q. What was your noon position on March 21st? A. 26:4 north latitude, 85:2 west longitude.

Q. What was your noon position on March 22nd? A. 28:17 north latitude, 89:21 west longitude. 260

Q. Where were these rivets that got loose, Captain? A. On the port side of the main deck, in the fore part, in front of No. 2 hatch.

Q. In the deck itself? A. Yes, sir.

Q. What did you do to prevent the water from going in? A. We put some cement up—well, during the bad weather we couldn't do anything.

Q. And after the bad weather, as you call it, was over, you put some cement on the loose rivets? A. Yes, sir.

Q. How many rivets were loose? A. Two.

Q. Did your bilge soundings increase in that hold? A. No, sir. 261

Q. The sugar absorbed the water? A. Yes, sir.

Q. Captain, were any bags cut when you discharged? A. Well, when they were working discharging the cargo, four or five sacks were cut.

Q. Is it not a fact that 200 or 300 bags were found to be cut by having rested on metal surfaces and edges in your holds? A. I haven't seen that.

Q. What dunnage did you have in the holds? A. What quantity, you mean?

Q. No, what kind? A. Wood.

Q. Did you have any other dunnage besides wood? A. No, sir.

262 Q. No paper? A. No, sir.

Q. No mats? A. No, sir.

Q. You had no covering, then, on your cross beams and angles? A. No, only wood.

Q. Did you have wood on these beams? A. Yes.

Q. Did you see it yourself? A. Yes, yes.

Q. What were they—just strips of wood? A. Yes, strips of wood.

Q. Were they tied on, or how were they made fast? A. Tied on with a piece of rope.

Q. The refined sugar consisted of about 27,000 bags,
263 more or less, did it not? A. I can't remember. I will have to refer to the bill of lading.

Q. These were in white bags? A. No, not all of them; about 7000 was in big sacks, in big bags.

Q. White cotton bagging? A. White, only 20,000 sacks.

Q. You had 20,000 sacks in white cotton bags? A. Yes, sir.

Q. Were not those bags very dirty when the vessel arrived in New Orleans? A. No, they were clean.

Q. Did you not see that the bags were damaged in loading? A. No.

Q. Or soiled in loading? You know what I mean by
264 soiled? A. Yes.

Q. Made dirty? A. No.

Q. Did not the stevedores at the loading port walk on these bags? A. They walked, yes, but without shoes.

Q. Did they not make the bags very dirty in walking over them? A. No, sir.

Q. That's all.

Re-direct Examination by Mr. Callan:

Q. Captain, you are a citizen of Peru, are you not? A. Yes, sir, I am a Peruvian.

Q. How long have you been a master? A. For about ten years.

265 Q. When did you obtain your license, what year? A. In 1925.

Q. That is an unlimited license? A. Yes, sir, unlimited.

Q. How long have you been going to sea? A. Since 1917, sir.

Q. Will you give me the dimensions of the Ucayali? A. Well, the Ucayali is 312 feet length over all.

Q. And how much tonnage, gross and net?

(Witness examines charter party.)

266 A. Only the net tonnage is shown, and that is 1700 registered tons.

Q. What is the speed of your vessel, Captain? A. Nine knots.

Q. What is the age of the vessel, if you know? A. She was built in 1917.

Mr. Rault:

Q. You fly the Peruvian flag, Captain? A. Yes, sir.

Q. And are all of your officers Peruvians? A. All Peruvians.

267 Q. Are you a native born citizen of Peru? A. I was born in Peru, yes, sir.

Q. How many men were in your crew? A. Forty-three with me.

Q. The Campania Peruana De Vapores y Dique Del Callao gave you your orders originally to proceed to New York? A. Yes, sir.

Q. Where was the vessel last dry docked? A. It is in the log book because it was just this trip. (Witness examines log book.) We left the dry dock on February 26, 1942, two days before we sailed?

Q. Where? A. Callao.

Q. Captain, when you were master of this ship in 1940,

the Compania Peruana De Vapores y Dique Del Callo was acting as owner then? A. Yes, sir.

Q. And during the whole time of your employment on board the ship, on both occasions, the Compania Peruana De Vapores y Dique Del Callo acted as owner? A. Yes, sir.

Q. They gave you orders and paid you and paid your crew? A. Yes, sir.

Q. And furnished the ship's supplies? A. Yes, sir.

Q. Issued bills of lading? A. Yes, sir.

Q. And signed charter parties? A. Yes, sir.

269 Q. Captain, when do you leave here? A. Perhaps tomorrow.

Q. That would be Sunday, April 12, 1942? A. Yes, sir.

Q. Where are you bound for? A. Cristobal.

Q. And then? A. To Peru.

Q. Your agents here are Page, Lhote & Company? A. Yes, sir.

Q. They are agents for the Compania Peruana De Vapores y Dique Del Callao? A. Yes, sir.

Q. And you have received your orders to proceed via the Panama Canal to Peru from Compania Peruana De Vapores y Dique Del Callo? A. Yes, sir.

270 Q. Have you had any advices, since you have arrived at New Orleans—any written advices—about not proceeding to New York? A. No, sir.

Q. In short, up to the present moment when you are testifying, you have had nothing except the verbal statement made to you by the Panama Railroad Company's man and the Peruvian Consul at Balboa? A. Yes, sir.

Q. No writing? A. No.

Q. No cable? A. No.

Q. No letters? A. No.

Q. Nothing? A. Nothing.

Q. Neither from the Compania Peruana De Vapores y Dique Del Callo or from her agents here, Page-Lhote & Company? A. No, sir.

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Mr. Callan:

Q. You were advised, Captain, however, that the agents and the Peruvian Consul had something in writing, were you not? A. Sir?

Q. You were advised that your agents at Balboa and the Peruvian Consul had instructions in writing? A. Yes, sir.

Q. But those written instructions were not handed to you; is that right? A. Yes, sir, that's right.

Q. That's all.

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Mr. Rault: That's all.

I hereby certify that the foregoing forty pages contain a true and correct transcript of the testimony of Francisco Olsen, as reported and transcribed by me:

(Signed) FERDINAND E. ZIMMER,
FERDINAND E. ZIMMER,
Notary Public.

(Seal)

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274 **Opinion.**

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF LOUISIANA,

New Orleans Division.

GALBAN LOBO CO., S. A. versus COMPANIA PERUANA DE VAPORES Y DIQUE DEL CALLAO 275 and The Steamship "UCAYALI," her engines, boilers, etc.	No. 562 In Admiralty

TERRIBERRY, YOUNG, RAULT AND CARROLL, Attorneys for Plaintiff.

MONROE AND LEMANN, NICHOLAS CALLAN, Attorneys for Defendant.

276 BORAH, District Judge:

The question here is whether or not the respondent and claimant has entered a general appearance, and submitted itself to the jurisdiction of the court, thereby waiving any right to maintain a plea of sovereign immunity.

The following is a statement of the proceedings in the order in which they occurred.

On March 30, 1942 the present libel in rem was filed by libellant against the steamship UCAYALI seeking to recover losses and damages growing out of a breach of a contract of carriage between libellant's agent at Calloa, Peru, and Compania Peruana de Vapores y Dique del Callao, alleged on information and belief to be the owner of the Steamship

UCAYALI. On the same day admiralty process in rem was issued by the Clerk and on the day following the United States Marshal executed the warrant of arrest and from that day until released on bond the vessel remained under seizure in the custody of the United States Marshal.

In order to relieve proctors representing the vessel from the burden of applying and obtaining an order of court fixing the amount of the bond, proctors for the libellant did, on April 1, 1942, in accordance with usual practice, address a letter to the United States Marshal advising him "that the libellant is agreeable to having the S.S. UCAYALI 278 released from seizure upon the posting of a surety release bond in the sum of $60,000.00". The original of this letter was delivered to proctors for the UCAYALI.

On April 9, 1942, a sworn claim for the UCAYALI was filed by the Republic of Peru, in which it alleged itself to be "* * * the true and bona fide sole owner of the said S.S. UCAYALI * * *; wherefore it prays to defend accordingly. The filing of this claim is not a general appearance and is without prejudice to or waiver of all defenses and objections which may be available to respondent and claimant particularly but not exclusively sovereign immunity."

On the same day a surety release bond, dated April 9th, 279 in the amount of $60,000.00, whereon the Republic of Peru was principal, and the National Surety Company was surety, was filed for the release of the UCAYALI. This bond though containing a reservation identical with that contained in the claim was otherwise in the usual form, the condition of the bond being

> "that if said claimant and surety abide by all the orders interlocutory or final of the court and pay the libelant the amount awarded by final decree rendered in the court to which the process is returnable, or in any appellate court, then the foregoing obligation is to be voided, but otherwise it will remain in full force and effect."

This bond contained a recital that the admiralty warrant had been issued by way of foreign attachment and upon discovery of the error was amended by striking out the words "by process of foreign attachment" and substituting therefor the words "by process in rem".

On April 11, 1942, in accordance with the desire theretofore expressed by proctors for the Republic of Peru, the testimony of Francisco Olsen, master of the UCAYALI, was taken on the merits of the case. Before swearing the witness, the following was dictated into the record by proctor
281 for respondent.

> "The testimony of Francisco Olsen, the master of the Peruvian Steamship Ucayali, is taken with full reservation and without waiver of all defenses and objections which may be available to respondent and claimant, particularly but not exclusively sovereign immunity; and the appearance of counsel for the Government of Peru and the Steamship Ucayali is for the special purpose only of taking the testimony of the master under the reservation aforesaid."

282 To which proctor for libellant replied:

> "I agree to the taking of the testimony of the Master by consent at the offices of Messrs. Monroe & Lemann on Saturday, April, 11, 1942, and agree to waiving, signing, sealing, certification and filing and all the other formalities provided by the de bene esse statute. I, however, do not agree to any reservation or attempted reservation as to the plea of sovereign immunity or any other plea that may in fact be waived by the taking of the testimony of the master."

After the witness was sworn and began his testimony, proctor for libellant made the following statement:

> "I wish to say, on behalf of libelants, that we shall take the position that the testimony of the Captain of the Ucayali and the appearance of counsel is a general appearance and waiver of any plea of sovereign immunity, or any plea connected therewith."

In the direct examination which followed many facts were brought out dealing with the merits of the litigation and through this witness Peru exhibits 1 to 6, inclusive 284 (being charter party on which this libel is based and bills of lading) were offered in evidence. None of these documents contain any reference to the alleged ownership and possession of the Republic of Peru.

On April 18, 1940, prior to the expiration of the return day, the respondent, through its proctors, on ex parte motion obtained the following order from the court:

> "On motion of Republic of Peru, respondent and claimant, through its proctors, Monroe & Lemann, who appear herein for the special and limited purpose of presenting this motion and with full reservation and without waiver of any defenses and objection which may be available to mover, particularly but not exclusively, sovereign immunity, and on suggestion to the Court that the return day to answer or otherwise plead to the libel herein expires on April 20th, and on further suggesting to the Court that mover requires an extension of at least twenty (20) days to present fully and adequately its pleas and defenses to said libel, particularly, but not exclusively, the defense of sovereign immunity; 285
>
> It Is Ordered that the time to answer or otherwise plead to the libel filed herein be and the same is

hereby extended for a period of twenty (20) days from April 20th, 1942.

New Orleans, La. April 18, 1942.

(Signed) A. J. CAILLOUET
Judge."

Similar motions, orders and extensions were granted on May 8th and May 29th, 1942.

The suggestion of immunity and motion to dismiss was filed by the United States Attorney on June 29, 1942. A
287 similar motion to dismiss was also filed by the Republic of Peru on June 17, 1942.

The courts have uniformly held that a sovereign may waive its immunity and that it may do this by a general appearance, or by acts or conduct inconsistent with a special appearance entered solely for the purpose of raising a jurisdictional issue, if such acts or conduct spell out a general appearance. *Ervin* v. *Quintanilla* (5th Cir.) 99 F. (2d) 935; *The Sao Vicente,* (3rd Cir.) 295 Fed. 829; *Dexter & Carpenter* v. *Kunglig,* (2nd Cir.) 43 F. (2d) 705. If as libellant contends, the respondent claimant has entered a general appearance and submitted itself to the jurisdic-
288 tion of the court, there can be no later assertion of immunity and withdrawal, for as was said in *Puerto Rico* v. *Ramos,* 232 U. S. 627, 34 S. Ct. 461, 58 L. Ed. 763:

> "The immunity of sovereignty from suit without its consent cannot be carried so far as to permit it to reverse the action invoked by it, and to come in and go out of court at its will, the other party having no right of resistance to either step"

In determining whether there has been a general appearance or submission to the jurisdiction, the intent of the pleader is to be determined not by what he says but by the nature of what he does. As was said in *Murphy* v.

Herring-Hall-Marvin Safe Co., 184 Fed. 495, "the effect is not to be deduced from what the party may have intended, but from what he did. It is the act which speaks, and not the secret purpose."

Applying the law to the facts and assuming, though not deciding, that respondent's action in claiming and bonding the vessel should be regarded as a special appearance, there is seemingly no escape from the conclusion that respondent entered a general appearance by taking the testimony of the master for use on the trial of the cause on the merits. *George Nelson, Master of the Barge Northern No. 30,* v. 290
S. S. Munwood, and another case, 1925 A. M. C. 136. See also *Clark* v. *Southern Pacific Co.,* (5th Cir.) 175 Fed. 122; 6 C. J. S. p. 7; 4 C. J. pp. 1317, 1318, 1334. And I reach the same conclusion with respect to the ex parte motions for extensions of time within which to answer or otherwise plead, for what the respondent did in each instance was to request an extension of twenty days "to present fully and adequately, its pleas and defenses to said libel, particularly, but not exclusively, the defense of sovereign immunity."

If, as here, the appearance is in effect general, the fact that respondent claimant styles it a special appearance will not change its character. The courts have held that an appearance for any purpose other than questioning the 291
jurisdiction of the court is general and not special, although accompanied by the claim that the appearance is only special, and a defendant appearing specially must, as a general rule, keep out of the court for all other purposes.

The plea of sovereign immunity should be overruled and the sovereign must be held to have waived its immunity to suit, and claimant respondent should be required to answer the libel on the merits.

New Orleans, Louisiana, October 13th, 1942.

(Signed) WAYNE G. BORAH
Judge.

292 **Order.**

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF LOUISIANA,
New Orleans Division.

GALBAN LOBO CO., S. A. versus COMPANIA PERUANA DE VAPORES Y DIQUE DEL CALLAO and 293 The Steamship "UCAYALI," her engines, boilers, etc.	No. 562 In Admiralty

This cause came on to be heard on the suggestion and plea of immunity filed herein by the Republic of Peru and by the United States Attorney for the Eastern District of Louisiana, and on the motion to dismiss filed by the Republic of Peru, and on the return made to the suggestion and plea of immunity and to the motion to dismiss made by libelant, and on the affidavits annexed to these pleadings by the several parties;

294 And after hearing argument of counsel for the respective parties the matter was submitted on briefs filed by the respective parties, when the court took time to consider;

Thereupon, and upon due consideration thereof, and for the written reasons of the court on file herein;

It is ordered that the suggestion and plea of immunity filed herein by the Republic of Peru and by the United States Attorney for the Eastern District of Louisiana and the motion to dismiss filed by the Republic of Peru be and the same are hereby overruled and that the Republic of Peru, claimant-respondent herein, is held to have waived its immunity to suit herein and is required to answer the libel herein on the merits within 20 days.

New Orleans, Louisiana, October 16th, 1942.

Signed, A. J. Caillouet
UNITED STATES JUDGE

Motion for Rehearing. 295

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF LOUISIANA,

New Orleans Division.

GALBAN LOBO CO., S. A. versus COMPANIA PERUANA DE VAPORES Y DIQUE DEL CALLAO and The Steamship "UCAYALI," her engines, boilers, etc.	No. 562 In Admiralty. 296

On motion of Republic of Peru, through its undersigned counsel and on suggesting to the Court that there is error in the opinion rendered in this cause on October 14th, 1942, overruling Mover's plea of sovereign immunity.

IT IS ORDERED that libelant's Galban Lobo Company, S. A., through its proctors of record, show cause on the 297
11th day of November, 1942, why a rehearing herein should not be granted.

Sgd. A. J. Caillouet
UNITED STATES JUDGE

Monroe & Lemann
Nicholas Callan

.....

Proctors for Republic of Peru
October 17, 1942.

298 **Minute Entry, November 18, 1942.**

Borah, j:

No. 562 (Admiralty)

GALBAN LOBO COMPANY, S. A.

versus

COMPANIA PERUANA DE VAPORES Y DIQUE DEL CALLAO and The Steamship "UCAYALI," her engines, boilers, etc.

This cause came on this day on motion of Claimant, Republic of Peru, for rehearing;

299 Present: Jos. Rault, (Terriberry, Young, Rault, & Carroll), Attorney for Plaintiff,
Nicholas Callan, (Monroe & Lemann) Attorney for Defendant,
L. V. Cooley, Jr., Assistant United States Attorney,

Whereupon, after hearing argument of counsel for the respective parties, IT IS ORDERED that said motion be, and the same is DENIED.

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Clerk's Certificate.

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United States of America, }
Eastern District of Louisiana, } ss.:

I, A. Dallam O'Brien, Jr., Clerk of the United States District Court in and for the Eastern District of Louisiana, do hereby certify that the annexed and foregoing is a true and full copy of the original record including all exhibits and testimony in the case entitled:

Galban Lobo Co., S. A.
vs.
Compania Peruana de Vapores y Dique
Del Callao
and
The Steamship Ucayali, Her Engines,
Boilers, etc.

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now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at New Orleans, La., this 2nd day of December, A. D. 1942.

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A. Dallam O'Brien, Jr.,
Clerk.

By H. W. Niehms,
Deputy Clerk.

(Seal)